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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE,
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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ADDITIONAL DOCUMENTS PROVIDED FOR USE OF COURT

9 printed copies of Brief & Appendix filed below.
9 printed copies of Petition for Rehearing in banc in Court below.
9 Xerox copies of 11 page MOTION TO QUASH filed March 20,1967 in District Court, including its own 38 page APPENDIX, for such use as Court may wish.

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October Term 1967

No.

IN RE LORING J. WHITESIDE,
Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Loring J. Whiteside, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit entered on November 28,1967, affirming the disbarment of Petitioner from practice in the Federal District Court of the District of Connecticut as ordered by District Judge M.Joseph Blumenfeld on June 20,1967, followed by denial without comment on July 12, 1967 of motion to vacate and set aside said judgment of disbarment.

OPINIONS BELOW

The PER CURIAM opinion of the Court below is reported in 386 F.2d 805 and is reproduced in the APPENDIX, infra, page AP-1. The denials of Rehearing in banc will be

found infra on page AP-3. The opinion of District Judge Blumenfeld will be found on pages A-8 to A-10 in the printed brief and appendix of the Court below, of which 9 copies have been filed for the use of this Court. Likewise 9 copies of the printed Petition for REHEARING in banc filed December 12, 1967 have been filed for the use of this Court, as have also 9 Xerox copies of an 11 page MOTION TO QUASH with its own 38 page APPENDIX as filed in District Court on March 20, 1967. All of the rulings and opinions of Judge Blumenfeld in the District Court will be found on pages A-1 to A-10 in the Appeals Court Appendix.

JURISDICTION

The judgment of affirmance of the Court below was entered on November 28,1967. A timely petition for rehearing in banc was filed December 12,1967 and denied December 21,1967. The jurisdiction of this Court is invoked under 28 U.S.C.1254 (1), 28 U.S.C.2101 (c), and Rule 22 (3) of this Court.

QUESTIONS PRESENTED FOR REVIEW

I. Can CANONS OF ETHICS 1 and 32 be invoked in the State of Connecticut to protect State Judges who have acted without jurisdiction ?

II. Is it an invasion of an attorney's First Amendment right to freedom of speech to subject him to sanctions of any kind for performing his duty in a respectful manner involving a group of State Judges who have wronged his clients ?

III. Is it an invasion of his right to due process for a Federal District Judge to declare he will rule on no more motions of an attorney whom he seeks to disbar ?

IV. Is it an invasion of his constitutional right to due process for a Federal Judge to rule that the Federal Rules of Civil Procedure are not applicable to disbarment proceedings without providing a substitute ?

V. Is it an abuse of discretion for any Federal Judge to base a judgment of disbarment, or an affirmance of same, upon a perfectly obvious falsehood ?

CANONS OF PROFESSIONAL OR JUDICIAL ETHICS INVOLVED

CANON 1. It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

CANON 32. No client ..... is entitled to receive nor should any lawyer render any service or advice involving ..... disrespect of the judicial office .....

CANON 29. UPHOLDING THE HONOR OF THE PROFESSION. Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

CANON 15. HOW FAR A LAWYER MAY GO IN SUPPORTING A CLIENT'S CAUSE. Nothing operates more certainly to create or to foster popular prejudice against lawyers as

a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause. *******

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability", to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

CANON 36. RETIREMENT FROM JUDICIAL POSITION OR PUBLIC EMPLOYMENT. A lawyer should not accept employment in any matter upon the merits of which he has previously acted in a judicial capacity. A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.

CANON 41. DISCOVERY OF IMPOSITION AND DECEPTION. When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it.***

CANON 11 - JUDICIAL ETHICS - UNPROFESSIONAL CONDUCT OF ATTORNEYS AND COUNSEL. A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counsel brought to his atten-

tion; and if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating and disciplinary authorities.

STATEMENT OF THE CASE

This is a disciplinary proceeding seeking disbarment of the petitioner from practice in the Federal District Court of the District of Connecticut, conceived and publicly set in motion by Chief Judge William H. Timbers as early as September 12,1966 (Appeals Appendix p.A-12), but formally filed on February 1, 1967. It involves no moral turpitude, malice, fraud or dishonesty or misbehavior of any sort or degree on the part of petitioner, and is based solely upon statements made in a federal complaint, No.11,551 concerning 8 State Judges, 7 of whom as individuals were named as defendants in a Civil Case, instituted August 5,1966 by petitioner on behalf of 3 members of the Tkaczyk family against 22 defendants for the enforcement of their 1st and 14th Amendment Amendment Constitutional rights to burial of their daughter's body underground in accordance with her church teachings and religious belief from infancy; and for damages for the wrongful prevention and unprecedented delay of such burial ever since her death on December 5, 1961 up to the present moment. It was thought that the gamut of fraud and concealment of what appears to have been a murder of the 45 year old Tkaczyk daughter by her husband, Kenneth Gallagher, one of the 22 defendants, had been run in State courts, and could be exposed and ended by a jury trial in Federal court under the Civil Rights Act. What has happened in the District Court further to obstruct and delay justice and to extend the evasion of said constitutional rights, and so continue the retention of a dead body in unrefrigerated temporary storage, may be found in pages 1 to 11 of petitioner's brief in the Court below, and does not need to be repeated again here. Likewise the Appendix annexed to that brief contains all of the rulings of District Judge Blumenfeld (pp.1-10); the Order to Show Cause (A-12 to 14); the U.S.Attorney's MEMO (A-14 to 21); the amended Tkaczyk complaint (A-22 to 39);and the ans-

wer and defenses proffered by petitioner (A-40 to 53) to the Order to Show Cause. The pertinent paragraphs in complaint 11,551 relating to judges are 2-A, 2-B, 3, 11, 20 & 21.

Particular attention is directed to the fact that petitioner did not offer any argument or evidence at the hearing conducted by Judge Blumenfeld on June 20, 1967 as will be noticed from the transcript of that occasion on page A-54 to 55 in Appendix below. This was for a two-fold reason. First, because there was such an abundance of evidence filed in court and accepted by Judge Blumenfeld with the QUASH MOTION on April 3rd, there was no need of presenting any more and certainly it should not be necessary to present all over again the huge amount of documentary evidence already in the file. Secondly. The FIFTH AFFIRMATIVE DEFENSE (A-44 to A-49) clearly enunciated petitioner's position that the Judge was acting without jurisdiction and had utterly disqualified himself by his rulings, so that the only thing to be accomplished by participating in the hearing would be to waive the constitutional rights the Judge had violated so completely, and that the petitioner did not care to do.

The first 11 pages of the brief below emphasize the abundance of the evidence presented and accepted on April 3rd, the mammoth falsehood about the total dearth of evidence set up in the opinion as a basis for disbarment, the judicial concealment of murder facts and how Judge Coles aided and abetted DeAndrade's criminal acts. Now we will consider a new subject:

JUDICIAL IRREVERENCE FOR ETHICS

As will be seen later on in this petition, one of the big problems faced by the American Bar Association is how to overcome judicial irreverence for ethics in their own behavior. This case affords some brilliant illustrations of this problem..

When the 5 State Supreme Court Justices were confronted on December 26,1963 with a Motion for action under CANON 11 to whichwas annexed 8 pages of facts in

the RECORD (of Appeal #5427) ESTABLISHING KENNETH GALLAGHER AS THE MURDERER OF HIS WIFE, OLGA (pp. AP 15-25 of Quash Appendix), the motion was never scheduled for a hearing and was held until January 23, 1964 when the Tkaczyks received notice from the Court Clerk (AP 26) that the motion had been dismissed for lack of jurisdiction, and after deletion of the MURDER part of the title, it was announced as dismissed in 151 Conn. 734. This action not only concealed the murder facts but put them in the waste basket. And the mandatory obligation of all 5 Justices under CANON 11 of Judicial Ethics to send the matter at once to the proper investigating and disciplinary authorities was also consigned to the waste basket. Five Justices working together thus to conceal instead of reporting it for investigation to the proper authorities, provides all the evidence needed of a conspiracy to conceal murder facts.

Judge Coles did almost exactly the same thing as regards his mandatory duty under CANON 11 which shows up clearly in the Appeals Appendix (A-58 to A-60), only he was hiding DeAndrade's felonies and threatened to use the power of the State to impound the evidence and put it under lock and key; which surely indicated his participation in the conspiracy to protect DeAndrade, by becoming an accessory after the fact. See p. 18 infra.

These few instances indicate that CANON 11 of Judicial Ethics is a dead letter in Connecticut. But Coles broke another vital CANON in August 1966 when he became the very first lawyer to put in an appearance for the 5 Justices of the State Supreme Court who were made individual defendants in the Tkaczyk civil action #11,551. This is in direct violation of CANON 36 which is set forth on page 4, supra. forbidding employment in connection with any matter a lawyer has investigated or passed upon while holding public office or being in public employ. And the sad thing about it is that he was thus unethically employed by the same 5 Supreme Court Justices who are shown in paragraphs 2-A and 20 of complaint 11,551 to have acted <u>without jurisdiction</u>

and in the commission of extrinsic fraud. This is another proof of conspiracy and collusion to violate CANON 36, and made it obligatory upon petitioner to file Motion of June 30,1967 for initiation of disciplinary proceedings against former Judge Albert L.Coles and defendants King, Murphy, Alcorn, House and Ryan for violations of CANONS 36 & 11 (Brief below p.11).

The moment Chief Judge Timbers had brought to his attention in August 1966 the unprofessional conduct of the 5 State Supreme Court Justices and of Albert Coles and defendant DeAndrade, as disclosed by virtue of the verified complaint 11,551, it was his bounden duty to refer the various charges at once to the proper investigating and disciplinary authorities under CANON 11, particularly as soon as he had diagnosed the overt acts as criminal conduct. The very least he could have done was to permit the 3 plaintiffs to proceed to trial and given them full opportunity to prove their charges before a jury. Instead of that he has given every indication of becoming a conspirator with the 8 State Judges to continue the conspiracy of concealment of the murder facts and of the evasion of the constitutional rights to immediate underground burial.

It should be noticed that CANON 41 (p.4 supra) requires the petitioner to "endeavor to rectify" the giant falsehood pronounced by Judge Blumenfeld (p.A-9 of Appendix below) and referred to on pages 8 & 9 of Brief below, where are listed 3 of his motions for rectification, reformation, and action by the U.S.Attorney. This does not pretend to be an exhaustive study of the judicial contempt for ETHICAL CANONS in this case, but at least enough to establish judicial irreverence for them in the highest places.

TACTICS FORCED UPON U.S.ATTORNEY ,

The attention of the Court is directed to the oral statement (infra p.AP-10 to 11) made to the Appeals Court below on November 22,1967 which served a dual purpose of doubling as a REPLY BRIEF as well as Oral Argument. Spread out there is a list of 7 acts of Judge Coles, clearly shown in the transcript of hear-

ing before him (A-58 to A-60) which had to be ignored and virtually denied by the U.S.Attorney in order to obey Judge Timbers' insistence upon a breach of ethics case against petitioner, who is convinced he would never have resorted to such tactics had not Chief Judge Timbers made it compulsive. See par.2,p.A-43 of Appendix below for further details.

MISLEADING OR FALSE STATEMENTS IN THE PER CURIAM

1.About the middle of the first paragraph(AP-1 infra) it is stated that "With two minor exceptions he (petitioner) did not practice law after he moved to Connecticut in 1921." One exception may quite properly be considered "minor", which involved Probate matters, Trust matters, corporation matters, real estate matters, building matters and collection matters handled by the petitioner for himself and family, always, however, calling in some other attorney when court action was desired by a collection client.

The other exception, however, could not possibly be termed a "minor" one. It was major in every sense and began November 28,1958 when petitioner filed a writ of error in the State Supreme Court involving the felonious misbehavior of a City Court Judge, arising out of the publication in a weekly newspaper edited and published by the petitioner, of the names, history and behavior of the top-level heads of ORGANIZED CRIME in the state; and by April 1961 his activity in State and Federal Courts had become a deluge of activity which to the utmost strained him to keep abreast of deadlines in the Rules of practice, occupying fully 75% of his working hours and often times in excess of 100% of a ten hour day, of which many hundreds of hours were used each year for research in law libraries and the building up of his own library. It included the preparation and argument of a wide variety of motion papers and appeals, legal memos and briefs, which frequently required work far into the night. Thus he has had 7 years of intensive practice in state and federal courts since April 1961, and 2½ years part time practice immediately preceding that, back to November 1958,which

can be verified in part by reference to 148 Conn.77 & 208, 151 Conn.723 & 725; Conn.Supreme Court Records & Briefs Vol.A-394,pp.248-363; and Vol.A-449, Part 2,pp. 305-402; also 368 U.S.830; 372 U.S.966; 381 U.S.903;& 386 U.S.1013; also 309 F.2d 322.

2. Towards the end of the first paragraph of the PER CURIAM (AP-2 infra) two typical allegations in Complaint 11,551 are quoted, one respecting a conspiracy to conceal the murder, and the other about a Judge aiding and abetting DeAndrade in attempted subornation of perjury, etc. Both of these assertions were proved by the 38 pages of documents in the QUASH APPENDIX and the 3 EXHIBITS accepted as evidence by Judge Blumenfeld on April 3rd, and were based not only on the public record of their actions but also on transcripts of the various Judges' sayings and behavior in Court as well as letters and one telegram passing to and fro between the various parties and the judges. Proof was thus not confined to judicial action alone, as can well be seen from the evidence presented. Seven very serious frauds were committed by Chief Justice King and his fellow Justices as are related in par.15, page 5, of the QUASH MOTION, 9 copies of which with its 38 page Appendix are available for use of this Court. The documents also reveal how the 5 Justices in the State Supreme Court, acting without jurisdiction, assigned a false reason for dismissal, thus defrauding the impoverished plaintiffs out of a hearing on their powerful case and then gypped them on the subject of a stay of cremation which kept them weeping, distraught and on the anxious seat day and night for 30 days until they found a new Connecticut lawyer who obtained from Superior Court Judge Thim a temporary injunction against cremation pending an action in equity for a permanent injunction. While all the time the 5 Supreme Court Justices knew an automatic stay of cremation was in force as a result of secret instructions they had issued to Clerk Horwitz to withhold entry of judgment for dismissal, openly announced but secretly withheld from entry as disclosed by two letters from Clerk Horwitz of which xerox copies are shown on p.AP 35 in the QUASH APPENDIX. The judicial brutality disclosed in this entire transaction is the equal of many wartime atrocities. And all 5 Justices gave their as-

sent to this massacre of Constitutional rights and his merciless treatment of a long suffering family whose battle for the right to observe the requirements of their religious teaching and beliefs will go down in history as a blot on the legal profession of this state and its maladministration of justice.

3. The second paragraph of the PER CURIAM speaks of "the conceded absence of any facts" (AP-2) to substantiate this horror stricken behavior of the 5 State Supreme Court Justices recited in the preceding paragraph. That one word "conceded" is, indeed, a humorous touch. Whoever wrote the PER CURIAM deserves a medal of some sort for peddling a giant falsehood in so sly and indirect a manner. If the panel of Appeals Judges read the second half of page 8 and page 9 of petitioner's brief, they did not digest it, or perhaps did not care to. At any rate they adopted Judge Blumenfeld's gargantuan falsehood in toto (middle of p.A-9 of brief below) and added the "conceded" whopper to it, both of which are annihilated by the 11 page MOTION TO QUASH and its APPENDIX with the 3 EXHIBITS. Important excerpts from Exhibit A are to be found on pages A-56 & A-57 and on pages A-58 to 60 will be found those from Exhibit B. Exhibit C is contained in the original record already certified and mailed to Clerk Davis.

4. It is childish for any adult person to speak of the allegations in Complaint 11,551 as being "grossly disrespectful" when the Justices themselves were so grossly fraudulent as pointed out in the verified complaint and again in par.15,page 5, of the QUASH MOTION and in par.2 supra. And to speak of them as "totally unfounded" or "wholly unsupported" is of value only in a comedy skit ridiculing follies of the bench. Reason is debased, truth is destroyed, justice is a mockery, black is made white, and the CANONS of ETHICS are converted into weapons of war to destroy the honor of and reverence for a great and vitally important profession.

THE QUESTION WHICH MOST NATURALLY COMES TO MIND

Why would Judge Blumenfeld risk his own reputation, endanger his career as a jurist and besmirch his

own record by fabricating an obvious falsehood upon which to base petitioner's disbarment ? Does he not have everything to lose and nothing worth-while to gain?

This Court is now referred for the answer to District Judge Robert C.Zampano, the youngest of the 4 District Judges assigned to the District of Connecticut. The moment he had finished reading the original Complaint #11,551, which he first saw on August 8,1966,he indicated that he had so many intimate friends among the 22 defendants that he would have to disqualify himself and would not sign any papers whatsoever pertaining to the case; not even an Order to Show Cause, a temporary restraining order or an authorization for disinterested persons to make service. Judge Clarie grudgingly came to the rescue in part but hunted for a way to ease up on the 5 State Supreme Court Justices even before he could digest the facts set forth in the complaint. Then Chief Judge Timbers entered the picture on September 12,1966 with some solution which allayed the consternation of the eleven counsel present at a hearing which was so promising that it caused the chief murder suspect to dance a jig at recess right in the court room after his counsel had communicated to him some secret message, and to cap the climax Judge Timbers threatened petitioner with disciplinary proceedings and piled up what proved to be 6 falsehoods upon which to base a finding of lack of jurisdiction byreason of the alleged absence of a substantial federal question. All of this material was incorporated in two affidavits for disqualification of all 3 Judges as soon as it was announced that a disbarment hearing was to be held on March 6 before all 4 of the District Judges sitting en banc. Immediately Judges Timbers, Clarie and Zampano withdrew from the en banc arrangement leaving Blumenfeld alone to do the job. It was a heavy responsibility to be laid on the shoulders of one judge. He stumbled and fell several times but always picked himself up only to stumble and fall again, for the load of hiding the treachery and fraud of the 8 State Judges was far too big to be carried by one Federal Judge. Paragraph 9 in the printed Petition for rehearing in banc before the Court of Appeals, summarizes the basic problem facing both State and Federal judges at all levels-

and that is WHAT IS THE BEST POLICY TO FOLLOW FOR UPHOLDING THE HONOR OF THE PROFESSION ? The American Bar Association has already spoken on this outstanding problem by giving us CANONS 15 & 29 (p.3 & 4 supra) to which petitioner owes his allegiance and support without "fear of judicial disfavor."

The very best evidence of the effectiveness and truth contained in Complaint 11,551 with respect to the 8 state judges is the desperation exhibited by both state and federal judges to prevent a hearing on the merits, and to make it appear there is no possible foundation for the true facts therein stated. The voluminous evidence presented on April 3, 1967 by the petitioner provides a complete bar to the maintenance of the untenable position taken by Judge Blumenfeld & by the panel of 3 Judges in the Appeals Court with 6 more Appeals Judges declining to rectify the error of their 3 unfortunate comrades.

THE SECRET CODE OF HONOR AMONG JUDGES TO PROTECT THEMSELVES

The promulgation and enforcement of the CANONS OF ETHICS for both lawyers and judges is one of the very best activities of the American Bar Association. It is calculated to advance the cause of justice and truth in the best traditions of the profession and even parallels the goals of Holy Writ. But in this case the CANONS are being used to obstruct justice and truth and to support what appears to be a secret code of honor among judges to protect each other from exposure of fraud or corruption at whatever the cost may be even if it becomes necessary to resort to perjury. Such a CODE OF HONOR is bound to wreck the profession unless the highest Court in the land sees fit to end such behavior immediately, and it would be difficult to find a cleaner cut case with which to begin than right now with this case of escalation with the falsehoods and perjury increasing each step of the way as the corruption rises from Court to Court.

A R G U M E N T

Judge J. Warren Madden of the U.S.Court of Claims in Washington, D.C. published in March 1952 an article entitled "Is Justice Blind?" in Vol.280,page 60,of the ANNALS of the American Academy of Political & Social Science, in which he said:

"It is probable that in the occasional case when a judge is dishonest, the dishonesty is not investigated and exposed as promptly as it would be in the case of other kinds of public officers, or of private persons. There is a customary respect, amounting almost to obsequiousness, in the attitude of lawyers toward judges, which makes a lawyer slow to suspect wrongdoing on their part, and slow to believe that any accusation which he might make would persuade his brother lawyers and the prosecuting authorities. If the judge is dishonest, as the lawyer may suspect, an accusation which did not result in his removal from the bench, would put the lawyer in the position where no one would hire him, for fear of the prejudice which the judge would naturally harbor against him. So it is probable that the occasional dishonest judge does not get his just deserts until his conduct has become quite intolerable. Some system should be devised whereby prompt investigations would be made by lawyers from other communities, or officers who are not dependent upon the accused judge for a living, when there is any substantial reason to doubt a judge's integrity."

The fact that petitioner has reached that time in life when his retirement income is amply able to take care of his needs, renders him immune to the dangers and deterrents of which Judge Madden speaks above. Moreover the secret code of honor among judges spoken of on the preceding page is repudiated by a select few of them such as Arthur Vanderbilt of New Jersey and the members of this Court in 1952 when they spoke by Mr. Justice Jackson in the disbarment case of Sacher v.U.S.,343 U.S.1 at pages 13-14 as follows:

"But that there may be no misunderstanding, we make clear that this Court, if its aid be needed, will unhesitatingly protect counsel in fearless,vigorous

and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatsoever."

Also in 1952 there was published a 247 page volume entitled "CONDUCT OF JUDGES AND LAWYERS" authored by Chief Judge Orie L. Phillips of the U.S. Court of Appeals, 10th Circuit, and Judge Philbrick McCoy of the Superior Court of California. both of whom were members of the American Bar Association Committee of Experts of the Survey of the Legal Profession, relating to Ethics, Discipline & Disbarment. This volume contains the official report of this special survey Committee on a very vital subject. Because of their pertinence to the issues in this proceeding, the following quotations are selected from the pages indicated:

(p.151) "Disregard of the CANONS is said to be "flagrant" in too many particulars **** Somehow the political pressures which seem to motivate most of the judges who depart from the requirements of the CANONS must be removed. **** The survey shows the imperative need for improvement in the matter of judicial conduct.

(p.212) "there is evidence of laxness in the discipline or removal of judges in proper cases. To some extent at least this is attributable to fear - fear on the part of lawyers with knowledge of the facts of a given case that an unsuccessful investigation or prosecution will bring retaliation from the judge. **** (p.213) "It can hardly be disputed that a judge who fails in any manner to recognize this obligation of the Bar is not worth his salt; nor is there any question that a judge who would retaliate in the event of an unsuccessful investigation or prosecution is not fit to occupy his office."

(p.153) "The challenge to lawyers is quite obvious. The judge may help a great deal, but the real impetus for reforms in this field must come from the lawyers. The lawyers must meet that challenge if they are worthy of their calling."

(p.144) "Our correspondent in that state (Michigan) adds that disciplinary proceedings under these rules have not been satisfactory for the obvious reasons

"that the members of the Grievance Committees, being practicing lawyers, are hesitant to present and try charges against their judges."

Suggested remedies start in the last line on page 151 as follows:

"Reform in the methods of selection of judges in order to remove them from political pressure ****** through the force of enlightened public opinion,*** The responsibility for enlightened public opinion lies not only with the Bar, but with the Bench as well, whose members too often display the lack of a proper sense of individual responsibility as leaders of public opinion. Too often, as Arthur Vanderbilt says, with respect to improvement in our procedures, 'every step that is taken to obtain a more effective administration of justice involves a battle with the existing order and with those who support it.' Generally they are in an entrenched position, and whether motivated by selfish interests or by mere inertia, they make formidable opponents."

Chief Judge Phillips concludes (p.152):

"When all the members of the Bar and of the Bench assume their full responsibilities as leaders of public opinion, the desired end will be attained. That end is well expressed by John W. Davis ***:

'While we are hoping for peace and praying, somewhat vainly, I fear, for easy taxes, let us lawyers and laymen alike see to it that we have an administration of justice not merely tolerable but approaching in purity and wisdom as near to the standard of the divine as feeble human nature can attain.'

Phillips continues:

"One road to the desired end is clearly signposted in Miller's concluding observations:

'It is our considered judgment that the remedy for the complaints now made against judges lies, not in a reform of methods of discipline of judges, but rather in reforms along the line of supervising the work of judges. In this field the complaints appear to be well grounded."

Note: This last reference to Miller relates to an ex-

cellent 3 page article in 50 Mich.Law Rev.737 (1952) by Frederick M.Miller under the title "Discipline of Judges."

DEDUCTIONS JUSTIFIED BY FOREGOING AUTHORITIES

1. The complaint #11,551 filed by petitioner in 1966 is exactly the kind of complaint which the AMERICAN BAR ASSOCIATION insists should be filed particularly as pertaining to the 8 or more judges, because "the real impetus for reforms in this field must come primarily from the lawyers"*** "if they are to be worthy of their calling."

2. Every word of the entire 12 pages of complaint is verified truth, told with startling precision and fearless accuracy, as may be observed from pages A-22 to A-39 in Appeals Appendix where it is set forth complete except for two Exhibits A & B attached to original.

3. Petitioner's only mistake was his failure to comply fully with the recommendation of the American Bar Association quoted above which would call for giving prominence to the criminal aspects of the action of the State Judges as well as their civil liability to the 3 plaintiffs.

4. Contrast, if you will, what the Chief Judge of the Court of Appeals of the 10th Circuit (Phillips) recommends as the duty of a worthy lawyer, and the behavior of his counterpart in the 2nd Circuit (Lumbard) who adopts as his own a falsehood invented by and incorporated in his written opinion by Judge Blumenfeld

5. Contrast also what Chief Judge Lumbard says to law students in Minnesota (AP-7 infra) about "the Federal Courts listening", and then demonstrates by his conduct in this case that they DON'T LISTEN, as pointed out in the printed Petition for Rehearing in banc of which 9 copies are available for this Court.

6. Compare what former Chief Justice arthur Vanderbilt of New Jersey says on the preceding page about

the obtaining of a more effective administration of justice involving a battle with the existing order, with the full fledged battle which has developed with the forces of evil in both District and Circuit courts of the Federal System, which would have been regarded as unbelievable were the evidence right before your eyes not so compulsive. Connecticut is in dire need of judges like Vanderbilt!

7. SUPERVISING THE WORK OF JUDGES is the chief reform recommended by Chief Judge Phillips near the end of page 16 supra. And that is in complete harmony with RULE 19 (b) of this Court in granting the writ of certiorari when a Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

ARE FALSEHOODS EVER JUSTIFIED IN COURT ?

Charles P. Curtis, Jr. of the Boston Bar says they are justified in a few situations which he describes in a fascinating article in 4 Stanford Law Rev. 3(1952). This position was roundly denounced by the famous Philadelphia lawyer, Henry S. Drinker, shortly thereafter at page 349 of the same Review volume. Drinker is an outstanding figure in practical ethics and actually served as one of the members of the American Bar Association Committee from the report of which so many quotations are made supra. If for no other reason than to clear up this one point for all federal Courts in the nation, petitioner seeks an adjudication of the highest Court in the land. Who is right?. Curtis, Jr. or Henry Drinker ? Chief Judge Phillips of the 10th Circuit or Chief Judge Lumbard of the 2nd Circuit ?

THE STATE JUDGE COLES MATTER

A case strangely analogous to the Coles matter is reported on page 145 of the Phillips & McCoy book on CONDUCT OF JUDGES AND LAWYERS as follows:

"North Carolina reports that in 1932 a certain judge was found guilty of being an accessory after the fact

"to an alleged embezzlement and of obliterating, injuring and destroying certain original documents relating to the embezzlement case. Conviction brought disbarment and removal from office."

The transcript on pages A-58 to A-60 in the Appeals Appendix conclusively shows very similar conduct by Judge Coles refusing to receive the evidence of DeAndrade's felonies, threatening to use the power of the State to expunge the evidence, impound it and put it under lock and key, besides rudely interrupting the plaintiffs when they offered the evidence and intimidated them into silence with bull dozer methods which was the outside limit of all Coles could do to aid & abet DeAndrade in his crimes, and rendered Coles under State Statute 54-196 liable to prosecution and punishment as if he were the principal offender. The plaintiffs got Coles' signature on that transcript which renders proof complete that he was an accessory after the fact to the utter confusion of the Appeals Court claim that the Coles allegation is "totally unfounded" in the "conceded absence of any facts." (AP-2 infra) That is a triple falsehood. There is no absence of facts, no absence is conceded, and the Coles statement is totally supported out of his own mouth and under his own signature.

No better authorities in this country are known by the petitioner to justify a reversal of his disbarment judgment than those cited in the preceding pages and the argument could very well cease at this point. It may, however, be of some value to this Court to present a brief discussion of the questions raised for review and listed on pages 2 & 3 supra.

I. CAN CANONS 1 and 32 BE INVOKED IN THE STATE OF CONNECTICUT TO PROTECT STATE JUDGES WHO ACTED WITHOUT JURISDICTION ?

As an introduction to this question there should be read the Third and Fourth Defenses filed with the Answer on June 12,1967 (Appeals Appendix pp.A-42 to A-44) This subject has also been thoroughly covered (a) IN PARS. 2, 4 & 9 of the QUASH MOTION; (b) PARS.4 & 3

of the Summary Judgment motion of May 22, denied May 31 as per ruling on p. A-7 of Appeals Appendix which makes no comment on this point; and (c) in PAR.4 (e) of affidavit supporting motion of June 30 to vacate disbarment judgment, denied July 12 as per ruling on p.A-10, again without comment.

The following authorities attest to the loss of judicial immunity for lack of jurisdiction:

Allen v.Gray,11 Conn.95,102 (1836) ANNOTATIONS:
Tracy v.Williams, 4 Conn.Rep.113 56 A.L.R. 1247
McVeigh v.Ripley,77 Conn.136 (1905) 173 A.L.R.808-18
Church v.Peerne, 75 Conn.350 (1903)
Holcomb v.Cornish,8 Conn.375,381
Bradley v.Fisher,80 U.S.335,351 (1871)
Aetna Ins.Co.v.Blumenthal,10 Conn.Sup.436 (1942)
Same: 129 Conn.545 (1943)
Ambler v.Church,1 Root (Conn.) 211
Bauers v.Heisel,361 Fed 2d 581,591 (1966-C.A.3)
Pierson v.Ray,385 U.S. ? (1967)

Since all judges who act without jurisdiction in the State of Connecticut are divested of any judicial protection attached to their office, there are no possible grounds for assuming that they are protected in any manner by CANONS 1 and 32 of Professional Ethics. This means that the District Court Judges had no possible jurisdiction to maintain any kind of a disciplinary action against the petitioner involving those 7 judges who acted without jurisdiction, for they had stripped themselves of every vestige of judicial immunity. This one point alone administers a solar plexus blow to the jurisdiction of the District Court to initiate or maintain this disciplinary proceeding and requires its instant dismissal.

Nor can jurisdiction be retrieved by the Coles comment in par.20 of the complaint for aiding and abetting DeAndrade. Aside from the truth of this allegation as presented on the preceding pages 18 & 19, further details are to be found in par.9 of the complaint devoted to DeAndrade (p.A-27), WHICH SHOULD HAVE BEEN MORE THAN ENOUGH TO STOP ANY SANE AND SENSIBLE JUDGE FROM TOUCHING THIS PROCEEDING.

II. IS IT AN INVASION OF AN ATTORNEY'S FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH TO SUBJECT HIM TO SANCTIONS OF ANY KIND FOR PERFORMING HIS DUTY IN A RESPECTFUL MANNER INVOLVING A GROUP OF STATE JUDGES WHO HAVE WRONGED HIS CLIENT ?

This question seems to be answered with an emphatic "YES" by the two landmark decisions of this Court in Garrison v.Louisiana,379 U.S.64 (1964) and N.Y.Times v.Sullivan,376 U.S.254-305 (1964) followed more recently by Beckley Newspapers Corp.v.Banks,19 L.ed 2d 290 (1967). All 3 of these cases emphasize Mr. Justice Brennan's assertion (p.272 of 376 U.S.) that

> "Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. **** Criticism of their offical conduct does not lose its constitutional protection because it is effective criticism and hence diminishes official reputations."

Other quotations and comments upon these two 1964 cases will be found in brief below at pages 11 to 16.This same constitutional violation of petitioner's 1st Amendment right to freedom of speech was set up by him in his answer on June 12,1967 as his FIRST AFFIRMATIVE DEFENSE(p.A-41 Appendix below); and was again incorporated in par 4 (d) of his June 30 affirmation in support of motion to vacate disbarment judgment as quoted on p. 15 of brief below. A number of older cases upholding the lawyer's right to freedom of speech respecting judges, with page references to where they may be found are as follows:

Re Hart,104 Minn.88 (1908) (A-46)Re Pryor,18 Kan.72,76
Austin's Case,5 Rawle (Pa.) 205 (A-45) (A-46)
Ex Parte McLeod (D.C.) 120 Fed.130,136 (A-45)
Ex parte Steinman, 95 Pa.220 (A-45 & A-46) (A-52)
RULING CASE LAW, Vol.2, par.184,p.1093 Lawyers' Pub.Co.
State ex rel.v.Circuit Ct.,97 Wis.1,12;72 N.W.193(A-41)
Patterson v.Colorado,205 U.S.454,463 where Court said:

> "When a case is finished courts are subject to the same criticism as other people." (p.15)

Thatcher,v.U.S.,212 Fed.801 (1914) where court says of

a lawyer citizen's freedom of speech relating to a judge's candidacy for re-election:

"His criticism may be as indecent and disrespectful as the facts justify. (p.17)brief below.

III. IS IT AN INVASION OF HIS RIGHT TO DUE PROCESS FOR A FEDERAL DISTRICT JUDGE TO DECLARE HE WILL RULE ON NO MORE MOTIONS OF AN ATTORNEY WHOM HE SEEKS TO DISBAR ?

As may be seen on p. A-7 of the Appendix below, Judge Blumenfeld made this startling announcement on May 31, in his last full paragraph on that page. It was a bombshell and was dropped just at a time when petitioner was preparing two motions, one for dismissal for lack of jurisdiction, the other for the Judge's disqualification, which, if either were denied, he intended to appeal as far as necessary to escape his heavy handed bias and prejudice aroused to boiling point because of his anxiety and sole responsibility to get the 7 State judges out of their very dangerous predicament. Such an appeal should be completed even before answer is filed as a matter of good practice. But he rendered that impossible by scheduling a hearing on the Order to Show Cause for June 20 and clamping down on all motions. His action was a deliberate violation of this Court's decision in Holt v. Virginia, 381 U.S. 131, 136-137 where Mr. Justice Black pointed out that "the right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues." See pages A-47 & A-48 in Appendix below & comment thereon extending to page A-49. This one case, recent and lucid, appears to settle this question in the affirmative and deprives the judge of any further jurisdiction over the proceeding, which petitioner announced forthwith as indicated on p. A-49 beginning at A-47 of Appendix below.

IV. IS IT AN INVASION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS FOR A FEDERAL JUDGE TO RULE THAT THE FEDERAL RULES OF CIVIL PROCEDURE ARE NOT APPLICABLE TO DISBARMENT PROCEEDINGS WITHOUT PROVIDING A SUBSTITUTE ?

Twice Judge Blumenfeld made this ruling: First, on May 31,1967 (p.A-7 in Appendix below) to escape the mandatory part of Rule 12 (b) relating to Summary Judgment, after honoring the first half of the same Rule by accepting 38 pages of documentary evidence plus 3 EXHIBITS which automatically converted a QUASH MOTION into one for Summary Judgment. Second, on October 30 (p.8 of Petition for Rehearing in banc) to escape a mandatory requirement of Rules 62 (d) & 73 (d) that judicial approval of a supersedeas bond, automatically serves as a stay of judgment while under appeal. He expressly honored these 2 rules on Sept.15 and then reversed himself on October 30. By this action he compelled petitioner to abandon the representation of his 3 clients in Civil Case #11,551, contrary to CANONS 15 and 44, and to turn down several other would-be clients who besought him for legal help in their problems. His May 31st ruling was his first step in an attempt to justify his total ignoring of the abundance of truth evidence with respect to the state judges and when called on the carpet for such strange conduct he boldly rushed into the forbidden area of falsehood on June 20 (p.A-9) and denied the very presentation of all this evidence.

As long as this disbarment judgment is on the books of the federal district court in Connecticut, these two rulings constitute a complete bar to due process for the petitioner, and all other disbarment proceedings in Connecticut will suffer from the same handicap, as it is his purpose to pursue whatever remedies are available to him to set aside this disbarment. If these two rulings are to be upheld by this Court, petitioner is entitled to know what rules of procedure govern disbarment proceedings. It will be noticed that the Court below neglected to rule on this point after granting petitioner's motion of Nov.8th for inclusion in that appeal an answer to this RULES question. (See p.AP-4 to AP-6 for motion and p.AP-6 for granting of the motion, infra).

The Federal Rules of Civil Procedure settle this question themselves. Rule 1 says:

"These rules govern *** in all suits of a civil na-

"ture *** with the exceptions stated in Rule 81", and disciplinary proceedings are not listed as exceptions in 81. And the freedom granted to District Courts in RULE 83 must not be "inconsistent with these Rules." Nor is petitioner aware of any amendments having been formulated or filed by a majority of the judges. The case of Coughlan v. U.S.,236 F.2d 927 (9th Circ. 1956) relied upon by the U.S.Attorney to banish the Federal Rules is readily distinguishable because Coughlan,after being convicted of several embezzlements, one of which was for $3950 from a client without any restitution what soever, sought to escape disbarment upon purely technical grounds having no merit. To have permitted him to have a stay pending appeal would have violated the court's duty to protect other clients from a similar fate.

"A disciplinary proceeding is civil rather than criminal in its nature. *** it is governed by the rules applicable to other civil actions."
7 Amer.Juris..2d, Attorneys, par.60, pp.84-85
Wernimont v. State,101 Ark.210; 142 S.W.194,196(1911)
Weeks on Attorneys at Law, par.80
Randall v.Brigham,7 Wall.523
Matter of Chandler,105 Mich.255, 63 N.W.69
Conn. Practice Book, Sec.21

V. IS IT AN ABUSE OF DISCRETION FOR ANY FEDERAL JUDGE TO BASE A JUDGMENT OF DISBARMENT, OR AN AFFIRMANCE OF SAME, UPON A PERFECTLY OBVIOUS FALSEHOOD ?

The manner in which Judge Blumenfeld and the 3 Appeals Judges in the Court below have acted with respect to the previous 4 questions may well be regarded as AN ABUSE OF DISCRETION as well as violations of Constitutional rights. But this present question is even more fundamental to JUSTICE than the Constitution itself;and is the basic requirement of all righteousness in law as well as religion and in all human relationships, even life itself. The STATEMENT OF THE CASE in this petition and in the brief below and all the material already presented in both documents make it unnecessary to relate again the evidence and proof of that MAMMOTH FALSEHOOD fabricated and pronounced by Judge Blumenfeld as print-

ed on page A-9 of the Appendix below. Judge Blumenfeld has been asked for a retraction; his 3 fellow judges have been asked for REFORMATION of it;and the U.S.Attorney has been duly advised of this instance of Perjury, based upon the violation of Blumenfeld's oath when he was admitted to the Connecticut Bar after getting his law degree at Harvard in 1928; all as shown by motions filed in July 1967 and listed on page 9 of brief below, none of which have yet been set for a hearing or acted upon in any way made known to petitioner.

COMPLETE LAWLESSNESS OF THIS PROCEEDING

This proceeding has now been in progress for slightly over one year, ever since Feb.1,1967 and in all that time neither the U.S.Attorney nor any of the judges have been able to present even one case which can justify disbarment in this case. In his MEMO (p. A-20 below) and in his brief below (p.6) the U.S.Attorney cites a total of 9 state cases, not one of which involves judges who have acted without jurisdiction so far as is apparent from the published reports.Hence none of them can be regarded as justifying disbarment in this case. But aside from that, everyone of the 9 involves one or more wrongful acts far beyond the limits of the instant case. Seven of the cases involve merely suspensions of short periods ranging from 60 days to 3 years, with 3 given 6 months each and 2 for 12 months each. These 7 cases involved such behavior as threatening evil consequences if the judges ruled contrary to him; charging judges of being guilty of the blackest and foulest of crimes without specifying what they were, and without proof; yielding to duress in making decisions and assisting others to perpetrate frauds upon various citizens without proof;judge and lawyer hurling obscene and offensive epithets at each other in court room in loud voices and prevented from physical attack upon each other only by intervention of nearby lawyers & officers; scandalous charges in lurid language, which are irrelevant and for which no relief could be granted even if true;that the only way the judges could escape scandalous rumors would be by reinstating his appeal;that the judge stirred up ground-

less litigation to satisfy a malicious instinct and for a share of the proceeds, and variations of such charges usually unaccompanied by the slightest effort to offer proof of their truth. In only 2 cases out of the 9 was disbarment imposed. In one of them (Mains) the lawyer was arrested for perjury and placed under $10,000.bond. Then he was arrested for attempt to abduct and murder the opposing attorney and had to provide another bond, this time for $20,000. When he had no proof to offer, he made a pathetic appeal for mercy on account of his wife and boys. The other disbarment occurred (Meeker) when he declined to present any evidence, withdrew his complaint against state judges and tried to resign before being disbarred.

So the whole proceeding is lawless in the sense of there being no authority whatsoever to support the disbarment viewed from any angle; lawless in the sense that all rules of procedure have been ruled inapplicable and no substitutes provided; lawless in the sense that constitutional rights have been massacred, and a gigantic falsehood fabricated to simulate justification for a judgment rendered void also for lack of jurisdiction. At the present moment the disbarment represents the complete triumph of evil utilizing CANONS OF ETHICS in a manner never intended by the American Bar Association.

C O N C L U S I O N

Upon the foregoing reasoning and authorities it is requested that a writ of certiorari issue for a review of the judgment of disbarment in this case, in the hope and belief that it will be found null and void for lack of jurisdiction as well as for abuse of discretion, the disqualification of Judge Blumenfeld to act as an impartial judge in this proceeding, and for the violation of petitioner's constitutional rights to freedom of speech and to due process.

Respectfully submitted,

Loring J. Whiteside

Dated: March 18,1968
Woodbridge, Conn.

Loring J. Whiteside, Petitioner, pro se
Woodbridge, Connecticut 06525

In re Disciplinary Proceedings against Loring J. WHITESIDE.

No. 187, Docket 31654.

United States Court of Appeals Second Circuit.

Argued Nov. 22, 1967.

Decided Nov. 28, 1967.

Disciplinary proceedings. Appeal by an attorney from order of the United States District Court for the District of Connecticut, M. Joseph Blumenfeld, J., which disbarred attorney from practice before that court. The Court of Appeals held that disrespect by attorney to state judges as shown by the filing of lawsuit in federal court alleging that state trial judges and judges of highest court in state entered into conspiracy to conceal facts concerning alleged murder will warrant disbarment from practice before federal district court when attorney adduced no facts to support his charges.

Affirmed.

1. Attorney and Client ⇐43

Disrespect by attorney to state judges as shown by the filing of lawsuit in federal court alleging that state trial judges and judges of highest court in state entered into conspiracy to conceal facts concerning alleged murder will warrant disbarment from practice before federal district court.

2. Attorney and Client ⇐46

Where attorney adduced no facts to support his complaint that state trial and appellate judges who ruled against his clients were in conspiracy to conceal facts about alleged murder, he exhibited such reckless disregard of the truth that he would not be protected from disciplinary proceedings by any privilege as to the criticism of persons in official positions.

Loring J. Whiteside, pro se.

Jon O. Newman, U. S. Atty. for the District of Connecticut, for appellee.

Before LUMBARD, Chief Judge, and KAUFMAN and FEINBERG, Circuit Judges.

PER CURIAM:

This is an appeal by Loring J. Whiteside from an order of the District Court for the District of Connecticut, Blumenfeld J., disbarring appellant from practice before that Court. In 1913 Mr. Whiteside was admitted to the Bars of the State of New York, the United States District Court for the Southern District of New York, and this Court, but, with two minor exceptions, he did not practice law after he moved to Connecticut in 1921. On February 17, 1964, Mr. Whiteside moved for admission and was admitted to the Bar of the United States District Court for the District of Connecticut in order to represent the plaintiffs in the case of Tkaczyk v. Gallagher et al., D.C., 265 F.Supp. 791.[1] On August 5, 1966 he filed a 12-page complaint in the District Court charging a conspiracy between 22 individuals, comprising in the main lawyers, a state's attorney, a deputy coroner, and various Connecticut judges

1. Appellant had informally advised the Tkaczyks in prior litigation between the parties in the Connecticut courts. The Tkaczyks had attempted to enjoin the husband of their deceased daughter from cremating her body, contending that their religious beliefs required underground burial. In addition, they claimed that he had murdered the deceased.

including all 5 judges of the Connecticut Supreme Court of Errors. The following are typical of the allegations in the complaint which Judge Blumenfeld [2] found grossly disrespectful of the judicial office and for which Whiteside was disbarred: "In numerous instances certain Superior Court Judges, certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal the murder [of the Tkaczyk's daughter] and perform overt acts of their own, attributable in some instances to their desire to protect from exposure the increasing number of prominent attorneys and of the State Judiciary and others who had gradually been sucked in and become involved in the matter * * the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretenses."

[1, 2] Mr. Whiteside has stated that the allegations against the state judges were based only on the public record of their actions in connection with the Tkaczyk's lawsuit. He is of the view that by exercising their judicial judgment—separately or collectively—adversely to his clients, they became "conspirators" in concealing the facts concerning the alleged murder. In the conceded absence of any facts tending to show anything more than that the rulings complained of, at worst, might have been erroneous, the district court was justified in finding that these grossly disrespectful allegations, repeatedly made, were so totally unfounded and so clearly in violation of the Canons of Professional Ethics [3] as to justify disbarment.[4]

We do not pass judgment on whether appellant behaved as he did because of his long absence from the law or because of faulty judgment. But it is clear that in addition his conduct in presenting these wholly unsupported charges is such as to put in doubt his ability to exercise the judgment which advocacy requires.

Affirmed.[5]

2. The other 3 judges of the District Court for the District of Connecticut refused to hear the disciplinary proceedings because appellant indicated displeasure with them.

3. Canon 1 of the Canons of Professional Ethics of the American Bar Association provides: "It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. * * *" Canon 32 provides: "No client * * * is entitled to receive, nor should any lawyer render any service or advice involving * * * disrespect of the judicial office * * *."

4. Appellant suggests that the rule of New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), immunizes him from disciplinary proceedings for his misconduct in persisting to make broadside attacks of grossly disrespectful proportions. We need not decide whether the *New York Times* rule applies to disciplinary proceedings against a lawyer for statements made in the course of litigation since, in any event, the allegations made by appellant would not be protected under that rule. The appellant, although given the opportunity to do so, adduced no facts to support his claim that the judges who ruled against his clients were conspiring to conceal the facts concerning an alleged murder. Surely to make such accusations—with no facts to substantiate them—simply because the judges ruled against his clients, exhibits a reckless disregard of the truth which would preclude protection under the rule of *New York Times*.

5. In view of appellant's advanced age and his infrequent practice of law, we would not voice any objection if the district court considered it appropriate to modify its judgment, and suspend the appellant from practice before that Court for a period of time.

PETITION FOR REHEARING IN BANC

This petition was filed in the United States Court of Appeals for the Second Circuit, Docket No. 31654, on December 12, 1967. Nine copies of it in printed form have been supplied for the use of this Court. It was denied without comment in the following manner:

Petition for Rehearing In Banc

Loring J.Whiteside, appellant pro se.

No active circuit judge having requested that a vote be taken on the suggestion that the case be reheard in banc, the same stands denied.

(Signed) J.Edward Lumbard
Chief Judge

December 21, 1967

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PETITION FOR REHEARING

A petition for rehearing having been filed herein by appellant, pro se,

Upon consideration thereof, it is

ORDERED that said petition be and it hereby is denied.

Dated: New York, New York
December 21, 1967

(Signed) J.Edward Lumbard

(Signed) Irving R. Kaufman

(Signed)
Wilfred Feinberg
U.S.C.JJ.

U.S.COURT OF APPEALS - - - - FOR THE SECOND CIRCUIT
In re LORING J. WHITESIDE Docket No.31654

MOTION FOR INCLUSION IN THIS APPEAL AN ANSWER TO THE QUESTION AS TO WHAT RULES OF PROCEDURE GOVERN DISBARMENT PROCEEDINGS

Nov. 8, 1967

The appellant respectfully represents:

1. This question has been brought to the forefront by the action of Judge Blumenfeld on October 30, 1967 seizing jurisdiction which he knew he did not possess and ruling in the face of respondent's protest, that his own signed approval of a perfectly valid supersedeas bond, could not provide a stay of the disbarment judgment he had pronounced, as required by Rules of Civil Procedure 62 (d) & 73 (d), on the ground that "The Federal Rules of Civil Procedure are not applicable to disbarment proceedings." (See p.A-7 near end of page) In this way he sidesteps the assertion in 3 Barron & Holtzoff FEDERAL PRACTICE par.1374,p.461 as follows:

> "The stay (in 62 (d)) issues as a matter of right in cases within the rule, and is effective when the supersedeas is approved by the court, which may be at or after the time of filing the notice of appeal."

2. Judge Blumenfeld does not seem to know himself what rules of procedure govern disbarment proceedings. As will be noted from a reading of the annexed September 14 MOTION FOR JUDICIAL APPROVAL OF SUPERSEDEAS BOND, he clearly indicated his intention of honoring said Rules 62 (d) & 73 (d) for the express purpose of enabling respondent to represent his clients at a hearing scheduled for September 18 before Judge Timbers in Civil Case #11551, and signed his approval of the bond on September 15. Six weeks later he changes his mind and decides Rule 62 (d) does not apply to disbarment proceedings. This vitally affects appellant's duty to his clients under CANONS 15 & 29 of Professional Ethics & renders him impotent to serve them properly and renders imperative early action by the Appeals Court on this point. Once before Judge Blumenfeld honored another Rule, this time 12 (b), on April 3, 1967 by accepting 38 pages of documentary evidence contained in an ap-

pendix to the MOTION TO QUASH, and then threw away the rest of the Rule (A-7) when he was confronted with having violated the mandatory part of the same rule relating to Summary Judgment. His aversion in this case for all rules as expressed in his opinion of May 31 on page A-7 of appellant's Appendix is a prime indication of his bias, prejudice and intolerance in his effort to shield a bevy of 8 State Judges, and other prominent lawyers. And it was in that very same opinion that he permanently disqualified himself as an enemy of due process by announcing that "NO MORE 'MOTIONS' WILL BE RULED UPON."

3. Judge Blumenfeld's banishment of the Federal Rules of Civil Procedure from disbarment proceedings, without substituting any other rules in their place, leaves this a lawless proceeding, before an avowed enemy of due process, who ridicules legal research (A-5) and displays a venom and lack of understanding (A-6) incompatible with a judgeship. Obviously this ruling of Judge Blumenfeld on October 30 is null and void for lack of jurisdiction in him to act, for violation of appellant's constitutional right to due process, and for leaving disbarment proceedings in a state of lawlessness hidden behind such a fog of uncertainty that neither respondent nor judge knows what to do or where to go or when. Even the American Bar Association would crack up if subjected for long to such stresses and strains over its very important and essential CANONS OF ETHICS.

4. This motion consists of an original and 3 copies to each of which is annexed xerox copies of the following motion papers and documents showing filing dates in the District Court, from which may be gleaned the various steps taken by both parties leading up to the necessity of filing this motion at a belated hour, but apparently provision has been made for such emergencies by RULE I9 (a) & (h):

Sep.14. MOTION for Judicial Approval of supersedeas bond. Approval was signed about 2:30 P.M. Sept. 15th by Judge Blumenfeld.....(1 page)

Oct.16. MOTION to vacate approval of supersedeas bond. (1 page)

Oct.23. Respondent's opposition to motion to vacate, with affirmation.....(3 pages)

Oct.30. MOTION for Disqualification of Judge Blumenfeld. Filed before court opened.Read by the Judge before he went on bench.Denied by him at close of hearing after an attempt to evade it.(See p.8 of printed Rehearing Petition)3pp.

Oct.30. EXCERPTS from Transcript of hearing on October 30 (Blumenfeld,J.)(p.8 Rehearing pet.)....1 p.

Nov. 1. Clerk Earle's letter re Judge's Order eliminating stay..... 1 p.

5. Respondent's citations and argument set forth in his 3 page Opposition MEMO annexed hereto as indicated above, appear to be sufficient for the purposes of this Court without more.

WHEREFORE, respondent-appellant requests this Court to include in its consideration of this appeal his opposition to Judge Blumenfeld's ruling of October 30 as indicated above, and to adjudicate the question as to whether or not the Federal Rules of Civil Procedure govern disciplinary proceedings, and if not, what rules do govern, as this is one of the outstanding constitutional questions involved in this case.

(Signed)Loring J. Whiteside
Respondent-Appellant,pro se
Woodbridge, Conn. 06525

November 17,1967

It is hereby ordered that the motion made herein by counsel for the appellant pro-se by notice of motion dated November 8,1967 for leave tc file material additional to brief is granted.

(Signed) J.Edward Lumbard
Circuit Judges

U.S.COURT OF APPEALS - - - - FOR THE SECOND CIRCUIT
In re LORING J. WHITESIDE -- Oral Hearing,Nov.22,1967

STATEMENT OF APPELLANT TO THE COURT

May it please the Court:

Appellant knows of no better way to open his oral argument than to quote what Chief Judge Lumbard said to the graduates of the William Mitchell College of Law, St.Paul, Minnesota, on June 11,1963 as follows:

> "Of course constitutional rights or any other rights are not worth the paper on which they are written unless some lawyer is willing to stand up in a court of law and fight for those rights. Where no lawyer is willing to take action which is unpopular and which may even be very dangerous, it must be said that the asserted right simply does not exist. Whether it be Mississippi or Ramsey County or anywhere else, that is the net result. It is only fair to add that if the courts pay no attention to the lawyer's plea, the right is also nonexistent. In all too many states only the federal courts have listened. *** We seem to have forgotten that ineffective law enforcement leads to disrespect for all law."

It was the willingness of the appellant to stand up in a Federal Court of law and fight for his clients'rights in Civil Case #11,551, which brought down the wrath of the District Court Judges in the District of Connecticut in the form of this disbarment attack upon him.

One of the most interesting parts of the U.S. Attorney's brief is on page 8 where he speaks of "unfounded ** charges" of the appellant, who, he claims, "offered no proof of the truth of the charges." And on page 9 he speaks of "wholly unsupported accusations." No such burden of proof rests upon the appellant under the Garrison & New York Times cases (Brief p.15-16). The burden of proving falsity and malice rests upon the U.S.Attorney, in the sustaining of which he has failed utterly. He has likewise failed to recognize or even deign to notice,that CANONS 29 & 15 of Professional Ethics compelled the appellant to file Com-

plaint #11,551 just as it appears on pages A-22 to A-39, calling for a jury trial of whatever issues of fact might have arisen, had not the Complaint been wrongfully dismissed by reason of 6 judicial mistakes of fact, which when rectified, will restore the case to its rightful position on the docket for answer and trial. By this preposterous procedure of harassment in filing disbarment proceedings on no legitimate basis whatsoever, the District Judges are endeavoring to substitute their own frightfully prejudiced opinions for a jury verdict of disinterested persons, and thereby thwarting justice and due process for the 3 plaintiffs as well as for the 22 defendants.

The folly of even attempting to offer evidence which is not obligatory in any legal sense, is made glaringly apparent by the reception accorded the 38 page APPENDIX and the 3 EXHIBITS, A, B & C, offered and accepted as evidence on April 3,1967 at the hearing before Judge Blumenfeld on the MOTION TO QUASH. The truth evidence was so powerful (pages 4, 5 & 6 in brief) the Judge did not know how to back down gracefully, so he ignored every particle of the evidence in his QUASH opinion (A-1 to A-4); repudiated his mandatory duty under RULE 12 (b) of the Rules of Civil Procedure, and then discarded all of those RULES as being inapplicable to disbarment proceedings, and then permanently disqualified himself as a judge in this proceeding by his May 31st ruling (A-7) that "No more motions will be ruled upon," and wound up on the scrap heap when on June 20 he denied the very existence of the 38 pages and the 3 Exhibits, in the last paragraph of PART I of his opinion (A-9).

The U.S. Attorney makes no attempt to explain or resolve this impossible situation except by saying on p.9 of his brief that :

"Appellant's points II & III are simply attacks upon Judge Blumenfeld for disagreeing with the various positions advanced by appellant during the disbarment proceedings. None is worthy of a response."

What worthy response could he possibly make when the

English language used by the Judge in pronouncing his falsehood was so simple and clear? And when its falsity was called to his attention in the MOTION on June 30 to vacate the judgment of disbarment (triplicate copies of this 9 page motion will be found among those furnished this Court), he made not the slightest effort to correct the impression he had made, but left it to be perpetuated indefinitely by denial of the MOTION on July 12 (A-10) without comment of any kind. No apology, no explanation, no retraction, nothing but unadulterated silence. That question as to his disqualification and as to whether it is an abuse of discretion to utter such a falsehood and to base a disbarment upon it, is a double header now in your hands for decision. It would appear his judgment of disbarment is null and void.

Another closely related question was placed in your hands for decision 2 weeks ago by motion dated November 8 and granted last week by you as a belated addition. Twice Judge Blumenfeld has come out flat-footed and declared "THE FEDERAL RULES OF CIVIL PROCEDURE ARE NOT APPLICABLE TO DISBARMENT PROCEEDINGS." (A-7 & p.5 of transcript of hearing on October 30,1967, of which excerpts in triplicate are in your hands). This appears to be in violation of Secs.1, 81 & 83 of the Rules themselves as is pointed out in Respondent's Opposition filed October 23rd of which 3 copies are in your hands. What your decision may be on this point has a bearing upon the procedure in every district court in the nation and is of particular importance to appellant at the present moment, and possibly for some time to come until the present appeal has run its course. He has a duty to perform for his clients imposed by CANONS 29 & 15 of Professional Ethics. A body has been lying unburied in a temporary unrefrigerated vault for almost 6 years awaiting the outcome of this litigation. It is a state felony under Statute 7-64 to hold a body without burial. but the 22 defendants in Case 11,551 are so powerful that no state judge has so far been found who will issue a warrant for the arrest of the custodian defendant for which application was made last August. It is the duty under the Constitution and Civil Rights Act for the Federal Courts to

come to the rescue of citizens thus deprived of their constitutional rights by the State or its courts. Complaint 11,551 is fully adequate to accomplish justice if accorded its rightful place on the federal docket.

One more brief reference to the disqualification of Judge Blumenfeld will be of help to this panel if the Judges will read the March 15 affidavits of bias which resulted in the voluntary withdrawal of Judges Zampano, Clarie and Timbers from the en banc arrangement first conceived. This is the first motion in the group of 13, fastened together and supplied in triplicate for the use of this Court. Likewise the judicial brutality of Chief Judge Timbers is on exhibition in the March 27th motion for enlargement of time, which comes next in that same group. Pages 18 to 20 of the brief cover the disqualification point.

The extremities to which the U.S. Attorney was forced to go in order to make even a semblance of a showing for this disbarment action is revealed in his paragraph 12 (A-18 & A-19) where he totally ignores the numerous statements of Judge Coles (A-58 to A-60) in which he (a) declines to honor his mandatory duty under CANON 11 of Judicial Ethics to criticize and correct unprofessional conduct of attorneys brought to his attention; (b) rudely and ruthlessly interrupts the plaintiffs when they started to offer proof of the subornation of perjury; (c) fails to recognize their oft repeated emergency need of immediate relief to obtain the burial of their daughter's body, as required by Connecticut law and the federal constitution protecting religious practices; (d) deliberately falsifying in the attempt to mislead and confuse them by saying they already had all the relief they could possibly want; (e) launched upon a tirade of intimidation; (f) tried to bull-doze them into silence on the incontrovertible documentary evidence they had for presentation to him of 2 breaches of professional ethics, one misdemeanor and 3 major felonies of the continuing type; and (g) threatened to use the power of the State to cover up these breaches and violations by expunging the evidence, impounding it and putting it under lock and key, which was just about the limit of everything

he could possibly do to aid and abet attorney DeAndrade in his crimes, and rendered him under State Statute 54-196, liable to be prosecuted and punished as if he were the principal offender. This was all quite evident in the Nov.7,1963appeal of the plaintiffs which included the 7 assignments of error (Nos.23-31) to be found in the QUASH APPENDIX (AP 8-11) of which this Court has triplicate copies, preceded by the Oct.18 Motion for Cease and Desist Order (AP 4-6) and the Julia Cravens letter to Judge Coles of October 30 (Ap 7). So serious did the State Supreme Court regard the appeal and assigned errors of Judge Coles filed on Nov.7,the unanimous Court acted almost immediately to set in motion the printing of an assignment calendar for dismissal of the appeal #5427 on the false grounds of lack of due diligence, of which 2 weeks notice had to be made for the hearing set for December 3rd. The latter of November 25th (AP-12) which the plaintiffs wrote Chief Justice King and the prompt reply by way of his Executive Secretary, John Halloran, on Nov.27th (AP 13), are astounding evidence of the calculated fraud and falsity of the charge of lack of due diligence which was ruthlessly used on Dec.3rd by judgment of dismissal, which was announced (AP 26) but secretly withheld from entry as proved by 2 letters of the clerk (AP 35).

The letter of Julia Cravens of December 10th and the telegram of Dec.15th (AP 14) to Chief JusticeKing read together with the various other documents in the QUASH APPENDIX, reveal and confirm over and over again the truth of the disputed allegations in Complaint 11,551, leaving U.S.Attorney Newman and Judges Blumenfeld and Timbers out on a limb with no place to drop.

Three copies of the QUASH MOTION with its 38 page APPENDIX are in your hands so that this panel may be satisfied with the actual visible evidence specifically admitted by Judge Blumenfeld with the consent of the U.S.Attorney on April 3rd, proving that the statements in Complaint 11,551 concerning State Judges are moderately, respectfully and truthfully stated and could not have been trimmed down without doing an injustice to the plaintiffs. Seven fraudulent acts of

the State Supreme Court Justices are set forth in Par. 15 of the Quash MOTION, and are enough without more to afford a justifiable background and mitigating circumstances for every word complained of in the Complaint. Had appellant omitted any of the allegations, how could he have offered evidence of them at the trial? He would have short changed his clients and endangered their rights. Every word in that complaint was carefully, even prayerfully, analyzed and tested before filing, and held off as long as possible. Nothing can be withdrawn. Not even a word.

After the U.S. Attorney succeeds in relegating the Garrison and New York Times decisions to oblivion by some hair-splitting distinction, he presents on page 6 of his brief 9 state cases which he thinks justifies appellant's disbarment. They have one thing in common. They all involve complaints, or affidavits or briefs or some other written paper filed in a court action. But not one of the judges involved in any of the 9 cases appears to have been acting outside his jurisdiction, as is the case here with the possible exception of Coles. By fraudulently seizing a jurisdiction they very well knew they did not possess, our 7 State Judges disrobed themselves, lost all their judicial immunity and have left no more rights than any other lawyer or citizen. Appellant has never found a case deciding or even discussing whether a disrobed judge is entitled to special treatment beyond that of any other citizen. And apparently the U.S. Attorney has not been able to find one, else he would have it on display. Four of these 9 cases are discussed and discarded in paragraphs 9 to 14 in the MOTION TO QUASH of which this Court has triplicate copies. These 4 are Robinson, Nelson, Philbrook & Andreu Ribas. Of the 9 cases, 7 of them gave the attorneys brief periods of suspension ranging from 60 days to 3 years, and only 2 were disbarred. One was Meeker which had some points in common with the instant case, but he declined to present any evidence of his charges, withdrew his federal complaint against the State Judges, and tried to resign as attorney before the judgment of disbarment and was only prevented from so doing by the refusal of the Court to accept it. So the facts do not help a decision in this case. The other disbarment was

of Mains after charging in an affidavit and letters that a judge had accepted bribes and maliciously plotted with the opposing attorney to have him arrested to get control of his witnesses; and after Mains was placed under arrest and bonded for $10,000. for perjury and then a bond of $20,000 for attempt to abduct and murder the opposing attorney and could not prove any of his charges, he made a pathetic appeal for mercy because of his wife and boys. Snow got 60 days suspension for accusing a judge of trading his judicial influence for a portion of the prospective fruits from vexatious and groundless litigation he said was incited by the judge. That case has a quotation on page 745 which is a masterpiece beginning "We do not claim,etc".

Two weeks ago, on November 6, the U.S.Supreme Court gave fresh light on its Garrison & N.Y.Times decisions in their case No.467, Beckley Newspapers Corp.vs.Hanks, reported in 36 Law Week 3188, when it reversed a jury verdict of $5000.in favor of a court clerk and said:

> "Our examination of the whole record satisfies us that 'the proof presented to show actual malice lacks the convincing clarity which the constitutional standard demands.' We put aside the question whether the proofs show that the allegedly libelous statements were false. If false, respondent did not and does not contend that petitioner published the statements with knowledge of their falsity."

In addition to the requests contained in the CONCLUSION on page 21 of the brief, appellant respectfully requests a ruling of this Court as to whether the Federal Rules of Civil Procedure govern Disciplinary Proceedings, and if not, what rules do govern.

Respectfully submitted,

(Signed) Loring J. Whiteside
Appellant, pro se.

Nov.22,1967

NOTE-Because this oral argument is virtually a reply brief with numerous references, it was written in advance of the hearing and copies given to each of the 3 Judges and to the U.S.Attorney. Loring J. Whiteside

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE,
Petitioner

APPENDIX No. 2

LORING J. WHITESIDE
Petitioner, pro se.
South Pease Road, Woodbridge,
New Haven, Connecticut 06525

INTRODUCTION & INDEX TO THIS APPENDIX

As will be observed from the Petition, it was prepared with references to 3 APPENDICES: (1) a short one of 13 pages annexed to the Petition containing Opinion and action in the Court of Appeals; (2) the Appeals Appendix of 60 pages containing action in the District Court, annexed to a 21 page Statement & Brief; & (3) a 38 page APPENDIX attached to a QUASH MOTION in the District Court on March 20,1967. This arrangement was made under the mistaken belief that 9 copies of (2) & (3) could be filed under the provisions of Rule 23 (1)(i), which was changed on October 2,1967, withdrawing that privilege, and requiring the Clerk to return the 9 copies of each which had been sent. It would be impossible for the Court to verify the facts and issues herein without easy access to all of the rulings of the District Court and to all of the documents contained in the Appeals Appendix. Hence that APPENDIX has been converted into an APPENDIX NO.2, SEPARATELY printed, of which 40 copies are being filed of the complete book in which it was printed, with a new jacket, so that page references may be identified without a total reprint of the Petition. The references to the QUASH APPENDIX can now be verified only from the certified RECORD, unless it should be ordered printed by the Court.

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NOTE- Numerous cases and quotations therefrom will be found in respondent's ANSWER in the Appendix herewith at pages A-40 to A-52. Also 3 pages of citations and quotations are included as pages 9, 10 & 11 in MOTION to QUASH, 3 copies of which are being furnished under Rule 16 for the use of the Court, but are not printed in the Appendix. The INDEX above does not cover these other two sources of authorities.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 31654

In re Loring J. Whiteside *Appellant*

BRIEF AND APPENDIX OF APPELLANT

STATEMENT OF THE CASE

This is an appeal filed July 20,1967 from the United States District Court for the District of Connecticut from a judgment of disbarment and from the denial of a motion for the disqualification of Judge Blumenfeld and from a denial of a motion to dismiss for lack of jurisdiction the order to show cause, all dated June 20,1967,and from a denial on July 13,1967 of a motion to vacate and set aside the judgment of disbarment.

Appellant is and has been a member of the bar of New York State and of the Federal Court of Appeals of the Second Circuit and of the Federal District Court for the Southern District of New York, since 1913 (76), with offices for 13 years of that time in New York City or White Plains; and more recently has become a member of the Federal District Court bar in Connecticut, and of the United States Supreme Court bar, with office adjoining his home in Woodbridge, Connecticut, a suburb of New Haven.

In May 1962 (77) his attention was called by the parents and sister of the deceased Olga Gallagher, who had been found dead in bed at the age of 45, on December 5, 1961, by her husband, Kenneth Gallagher,to circumstances, both before and after death, which indicated a likelihood of murder, with the surviving husband the prime suspect. Appellant thereafter observed the continuous and extraordinarily diligent state court efforts of Olga's next of kin for 4½ years through various attorneys and themselves to obtain underground bur-

ial of Olga's remains as required by her training and belief in the teachings of the Russian Orthodox Greek Catholic Church, which forbids cremation as insisted upon by the surviving husband in violation of her Constitutional rights under the 1st and 14th Amendments to freedom of religion as applied to the mode of burial.

In 1966, when all of their state efforts had failed, due principally to fraudulent evasions by the State Supreme Court of the issues and the Constitutional question involved, appellant was retained by Olga's next of kin to represent them in a Federal suit (# 11,551) seeking the enforcement of their Constitutional right to the kind of burial required by their religion, and compensatory and punitive damages for overt acts in a civil conspiracy of 22 defendants to block their rights or a hearing on the merits, as may be seen by reference to the amended complaint.(Sup.2,14). In February 1967 Chief Judge Timbers, after dismissing the complaint for alleged absence of a substantial federal question on September 12, 1966, instituted disciplinary proceedings (71) against the appellant for what was said to be alleging "criminal conduct on the part of several named and unnamed judges of the State Courts of Connecticut", in violation of CANONS 1 and 32 of Professional Ethics, which was said to constitute gross disrespect for State Judges, 5 of whom were in the Supreme Court, 2 in the Superior Court, and an 8th unnamed Judge since resigned from the Superior Court. The latter is shown by the U.S.Attorney's MEMO (79) to be former Judge Albert L. Coles of Bridgeport, charged with "aiding and abetting DeAndrade in attempted subornation of perjury" as disclosed by a state transcript. (Exhibit B). The principal other allegation in Complaint #11,551 considered objectionable by Judges Timbers and Blumenfeld as disclosed by the latter in his RULING ON PETITION TO QUASH (156-157) occurred in Complaint par.11, attributing to certain judges a "conspiracy to conceal the murder." (Sup.2,14). The order to show cause itself (71) specifies no objectionable allegations in the complaint other than those alleging criminal conduct of the judges, but have to be gleaned from pars. 2-A, 2-B, 3, 11, 20 & 21. It will be noticed in these 6 paragraphs that

it is the overt acts of the 8 judges which are recited and in no instance is the word "criminal" applied to them. Specific criminal violations are attributed to other defendants in pars. 4, 5, 6, 7, 8, 9, 15 & 16, (Sup.2) but in no instance to any judge. The complaint makes it clear that the wrongful acts of all 22 defendants, including the 7 judges, constituted a civil conspiracy. (Par.2-B, 12th line; & Par.18, last line) And made no pretence that they amounted to a criminal conspiracy.

It is conceded in the MEMO of the U.S.Attorney(81) that appellant's "conduct appears to be misguided rather than malicious" and that "he has not ** taken any steps to be abusive or otherwise act improperly toward the state court judges."

It will also be noted that:

1. All of the overt acts attributed to the 8 judges, including Coles, are material, relevant and essential to the civil cause of action, and could not in good conscience be omitted. This is mandatory under CANON 15 which specifies that "In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense."

2. CANON 29 of Professional Ethics compelled the appellant to "expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar (which includes judges) who has wronged his client." This is regarded, as shown by the heading of this CANON, as "UPHOLDING THE HONOR OF THE PROFESSION."

3. CANON 15 compels appellant to give his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial dis-

favor or public unpopularity should restrain him from the full discharge of his duty."

4. No moral turpitude is attributed to the appellant in this proceeding. Nor is he charged with malice, fraud or dishonesty of any sort or degree.(81, last 8 lines)

5. In all of his public or private relations with the 8 judges involved, appellant's conduct has been scrupulously respectful, and the filing of the civil conspiracy suit against 22 defendants, of whom 7 are individuals holding the office of state justice or judge, was wholly within the scope of his duties as a member of the bar of the U.S.District Court and the CANONS of Ethice prescribed by the American Bar Association.

HOW AND WHEN PROOF OF THE JUDGE COLES ALLEGATION WAS MADE

On March 20,1967 appellant filed a MOTION TO QUASH all charges in the order to show cause and attached to it an APPENDIX of 38 legal size pages of which 12 were devoted to the Coles matter as follows: p.AP 4-11 (110-117), p.AP 24-25 (130-131) and p.AP 30-31 (136-137);and Par.18 (102) of the MOTION TO QUASH indicates clearly why appellant regarded it important to present these additional documents and one letter to clarify the Coles situation to show exactly what he did to aid and abet DeAndrade's attempted subornation of perjury and other crimes and breaches of professional ethics.

At the hearing on the MOTION TO QUASH held on April 3,1967 Judge Blumenfeld accepted as evidence, with the consent of both parties (3), the entire APPENDIX of 38 pages, and 3 EXHIBITS as follows: "A"- a 29 page Transcript of Hearing before State Judge John C. FitzGerald on March 22, 1963 for the purpose of showing by pages 5, 6, 14, 15 & 16 that it was everyone of several hundred sworn allegations in a 48 page affidavit filed on Jan.21,1963 which attorney DeAndrade insisted be repudiated as false and untrue by the 3 plaintiffs before he would permit underground burial of the deceased Olga Gallagher (8); "B" - a 14 page Transcript of hearing

before State Judge Albert L. Coles on October 25,1963, in which pages 10-14 establish the statement in Complaint Par.20 that "the transcript disclosed a Superior Court Judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretences." (54); "C" - a 117 page PRINTED RECORD of State Appeal #5427 wherein is printed on pages 52 to 102, the aforementioned 48 page affidavit which serves as the foundation for the aforesaid quotation from Complaint Par.20. (54)

Excerpts from EXHIBITS "A" & "B" transcripts will be found in the APPENDIX as shown in its index, which when read in conjunction with the above mentioned 12 pages of documents in the MOTION TO QUASH Appendix, affords the best possible proof of what is set forth in the Complaint about the unidentified Judge Coles in aiding DeAndrade and defying his bounden duty under CANON 11 of Judicial Ethics, which he regarded as a dead letter inapplicable to him. Had he performed his duty under CANON 11, Olga's body would in all probability have been buried according to law within less than 10-days. By evading his duty and assigning irrelevant excuses therefor, Coles will have succeeded in postponing the burial for another 4 years by the time October 25, 1967 rolls around. There is nothing "unjust" or "unfair" about withdrawing an appeal when the purpose of it is achieved in a more direct and speedy manner.

HOW AND WHEN JUDICIAL CONCEALMENT OF MURDER WAS PROVED IN THIS PROCEEDING

The 11 page MOTION TO QUASH with its APPENDIX of 38 pages of letters and documents, filed March 20,1967 by the respondent (96-144), provided the best of documentary evidence to show how all the Justices of the State Supreme Court ignored, concealed and evaded every shred of murder evidence as well as all the issues in both appeals, and were discussed in pars.15,16,17 & 19 of the MOTION TO QUASH. Concealment of the murder evidence began with Probate Judge Leavenworth as is shown by the letter of Julia Cravens to him on July 9,

1962, and the letter of respondent to him on October 5, 1962 (108 & 109) (Quash AP 2 & 3). The TKACZYK letter of Nov.25,1963 to Chief Justice King and John Halloran's reply thereto of Nov.27 (118 & 119) (Quash AP 12, 13), present facts which show the lack of jurisdiction in the Supreme Court to take steps for dismissal and the possibility of the withdrawal of the appeal if the Superior Court grants a motion heard by Judge Klau on Nov.22. The letter and telegram to Chief Justice King of Dec.10 & 15,1963 (Quash AP 14), and the MOTION of Dec.26 for action by the Supreme Court under CANON 11 of Judicial Ethics, reciting 8 pages of "facts in the RECORD establishing Kenneth Gallagher as the murderer of his wife, Olga (Quash AP 15-23), were measures taken by the Tkaczyks to avert, if possible, any conclusion that the 5 Justices were joining with other Judges and attorneys to conceal murder evidence. But it was vain hope. As will be observed on Quash page AP 26 from the upper of 2 notices received from Clerk Horwitz,the MURDER MOTION under CANON 11 was dismissed for alleged lack of jurisdiction, and even the MURDER portion of the title was deleted when it came to publishing this disposition in 151 Conn.733, which was the only instance of altering the official title of a Tkaczyk case motion in 151 Conn.728,732 & 734. Yet there is nothing in Canon 11 exempting Supreme Court Justices from its operation, or from at least referring the facts therein stated to the proper authority in their estimation. It is a clear case of their sitting on the lid just as did Judge Leavenworth, supra.

WHAT JUDGE BLUMENFELD DID WITH ALL THIS EVIDENCE

On April 24,1967 in his RULING on petition to Quash (155)(p.A-1) Judge Blumenfeld completely ignored every particle of the evidence in the 38 pages of the Quash Appendix and in the 3 EXHIBITS, save only in the first paragraph of his SECTION III where he utilizes EXHIBIT "B" transcript simply as a means of identifying Judge Coles as being the anonymous judge mentioned in par.20 of Complaint 11551, apparently forgetting that it was U.S.Attorney Newman who identified Judge Coles on pages 4 & 5 of his MEMO.(79-80)

Judge Blumenfeld went further and ignored his mandatory duty under RULE 12 (b) of the Rules of Civil Procedure to treat any motion to quash as one for summary judgment, when matters outside the pleading are presented to, and not excluded by, the Court. When he showed no signs of observing his mandatory duty in this respect, respondent was obliged to remind him of it in a 5-page MOTION FOR RULING AS TO SUMMARY JUDGMENT filed on May 22nd.(169-173). Nine days later he sought to evade this mandatory duty in a RULING (174)in which he declared "The Federal Rules of Civil Procedure are not applicable to disbarment proceedings." He then capped the climax by shutting off due process completely by saying unabashedly "NO MORE MOTIONS WILL BE RULED UPON."(p.A-7)

This arbitrary and unconstitutional stand proclaimed by the Judge on May 31st was a brazen repudiation of U.S.Supreme Court decision in Holt v.Virginia, 381 U.S.131,136-137 (1965) which had been called to his attention on March 20,1967 on page 10 of the MOTION TO QUASH, where Justice Black for the Court said:

"It is settled that due process and the 6th Amendment guarantee a defendant charged with contempt such as this "an opportunity to be heard in his defense,- a right to his day in court and to be represented by counsel. In re Oliver,333 U.S.257,273. See also Gideon v. Wainwright, 372 U.S.335. The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. See Willner v.Com.on Character &Fitness, 373 U.S.96,105. And since a fair trial in a fair tribunal is a basic requirement of due process, In re Marchison, 349 U.S.133,136, it necessarily follows that motions for change of venue to escape a biased tribunal raise constitutional issues both relevant and essential. Cf.Irvin v. Dowd, 366 U.S.717, 722; Tumey v. Ohio, 273 U.S.510. **** (p.139) our conclusion is that these petitioners have been punished by Virginia for doing nothing more than exercising the constitutional right of an accused and his counsel in contempt cases such as this for doing

against the charges made. REVERSED & REMANDED."

Respondent was thus compelled to declare Judge Blumenfeld disqualified any longer as Judge in this proceeding and did so in paragraph 5 of his FIFTH AFFIRMATIVE DEFENSE of his ANSWER filed on June 12.(180-181). The closing sentences are as follows:

"The predicament in which a decent lawyer finds himself when confronted by a determined prejudiced Judge who won't even obey the United States Supreme Court is fantastic and sort of humorous. Anyway from this moment on, the respondent protests against any further action by Judge Blumenfeld in this case on motions or anything else. And refuses to waive his constitutional rights to due process which will render null and void any adverse action in the past or in the future by Judge Blumenfeld, whose jurisdiction in this case is utterly and completely gone."

This disqualification was based solely upon his own misbehavior and remarks, interlarded with sarcasm readily apparent on the record of his various RULINGS dated April 24, two on May 17 and the one on May 31, (155, 163,164,174) all of which are in the Appendix herewith. This record was supplemented by an affirmation found in paragraphs 2 & 3 (197,198) filed on June 30 in support of MOTION TO VACATE DISBARMENT JUDGMENT. By this time Judge Blumenfeld had abandoned all pretence to recognized judicial behavior and had leaped headlong into the very lamentable field of criminal misbehavior himself, when in his OPINION of June 20 (191), when speaking of Judge Cole's misbehavior and the concealment of murder evidence by the State Supreme Court Justices,he invented and pronounced the following falsehood(192):

"Mr Whiteside has not demonstrated in any manner that he had any grounds or probable cause whatever for making such assertions. He presented no evidence or facts to support them. ** During these proceedings he has failed to show cause why he should not be disbarred."

Thereby he ignored and even denied the existence of

all 38 pages of documents and letters attached in an Appendix to the MOTION TO QUASH and the 3 EXHIBITS A, B & C, discussed on pages 4, 5, 6 & 7 supra. He ignored completely the 4 times respondent referred him, at the June 20 hearing, to the considerable evidence previously presented, and acted and spoke as if it didn't exist.(58-70) See excerpts from June 20 transcript in Appendix herewith.. He ignored all 5 paragraphs of the Answer and all 9 AFFIRMATIVE DEFENSES therein set forth and the numerous decisions of the U.S.Supreme Court & other courts which deprived him of any jurisdiction to maintain such a lawless proceeding. His desperation to find a legitimate basis for the coveted disbarment drove him to the employment of a falsehood as his only resource. Nine times at the June 20 hearing he tried to entice the respondent into presenting evidence which was always declined because of his disqualification & lack of jurisdiction, or because of fully adequate evidence previously presented and available if he wanted to look at it.

The fiasco and voidness of his judgment of disbarment on June 20 was pointed out unmistakably in a motion on June 30 (195) to vacate and set aside the disbarment which offered 5 pages of points and arguments and 3 pages of case citations and quotations, all of which were again ignored and the motion denied without either hearing or comment on July 12 (208).

The giant falsehood thus employed by Judge Blumenfeld necessitated 3 motions by respondent, none of which have yet been acted upon or set for hearing. They are:

1. On July 12-MOTION FOR RETRACTION BY JUDGE BLUMENFELD - on the analogy of the retraction clause in State Statute 52-237 for mitigation of libel damage. (205)
2. On July 12-MOTION FOR REFORMATION OF FALSEHOOD--by other judges of same Court, including Timbers,Clarie & Zampano, as required by the oath taken by each person admitted to state practice. (204)

3.On July 31-MOTION FOR ACTION BY U.S.ATTORNEY as re

quired by CANON 29 of Professional Ethics which lays upon appellant the duty of bringing any instance of perjury to the knowledge of prosecuting authorities. Violation of his oath to "do no falsehood, nor consent to any to be done in court" constitutes perjury by Judge Blumenfeld. (210)

DISCIPLINARY PROCEEDINGS GREATLY NEEDED AGAINST COLES, KING, MURPHY, ALCORN, HOUSE AND RYAN

At this time when the 4 District Court Judges in the State of Connecticut appear to be so ethically minded, seems to be a most opportune time for them to show their colors on the subject by instituting DISCIPLINARY PROCEEDINGS against former Judge Albert L. Coles of Bridgeport who was the first counsel to put in an appearance for the 5 individual defendants King, Murphy, Alcorn, House and Ryan in CIVIL CASE No.11,551, which was in open violation of CANON 36 of Professional Ethics, declaring that "a lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity." Furthermore extensive evidence has been in Judge Blumenfeld's hands ever since April 3,1967 of how Coles refused to honor the mandatory requirements of CANON 11 of Judicial Ethics to "correct unprofessional conduct of attorneys" and "if adverse comment is not a sufficient correction, should send the matter at once to the proper investigating and disciplinary authorities."His brazen breach of both of these CANONS makes it imperative that the 4 District Judges initiate proceedings immediately against Coles on both counts and including Justices, or former Justices, King, Murphy, Alcorn, House and Ryan who conspired with him to violate CANON 36 by engaging him as counsel for themselves in Action 11,551. Moreover said King and Murphy should be confronted with an Order to Show Cause why they violated CANON 11 as described on page 6 supra.The time for house-cleaning and fumigation has now arrived. God save the United States of America and the State of Connecticut.

Appellant has filed two other motions, which have not been acted upon or assigned for hearing, as follows:

June 30. (185) MOTION FOR DISCIPLINARY PROCEEDING against attorney Coles for breaches of CANONS 36 & 11.

Aug. 10. (Sup. 30-32) MOTION TO DISMISS FOR LACK OF JURISDICTION THE INSTANT PROCEEDING #11,798, in view of 2 newly discovered cases: Garrison v. Louisiana, 379 U.S.64 (1964); and New York Times Co. v. Sullivan, 376 U.S.254 (1964).

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QUESTIONS PRESENTED

I. Is the judgment of disbarment void for lack of jurisdiction ?

II. Has Judge Blumenfeld so conducted himself as to be disqualified to sit on this disciplinary proceeding, thus rendering the judgment void ?

III. Was it an abuse of discretion for Judge Blumenfeld to fabricate a falsehood upon which to base a judgment of disbarment ?

ARGUMENT

I. Is the judgment of disbarment void for lack of jurisdiction ?

Fortunately the U.S.Supreme Court in Garrison v. Louisiana, 379 U.S.64 on Nov.23,1964, spoke so clearly on subject matter almost identical to the instant case that the answer to this first question can be deduced from the facts and opinion set forth in that case. Fantastic as it may seem, even the number of judges forming the subject matter of the two cases is the same. District Attorney Garrison had a dispute with 8 Judges during which he held a press conference at which he issued a statement disparaging their judicial conduct. As a result he was tried without a jury before a judge

from another parish and convicted of criminal defamation under a State Statute and fined $1000. which was upheld by the State Supreme Court. Justice Brennan, speaking for the U.S.Supreme Court, said (p.65-66):

"The principal charges alleged to be defamatory were his attribution of a large backlog of pending criminal cases to the inefficiency, laziness, and excessive vacations of the judges and his accusation that by refusing to authorize disbursements to cover the expenses of undercover investigations of vice in New Orleans, the judges had hampered his efforts to enforce vice laws. In impugning their motives,he said:

(p.66) "The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the DA's funds to pay for the cost of closing down the Canal Street clip joints ** This raises interesting questions about the racketeer influences on our eight vacation-minded judges. *** (p.76) As the Louisiana Supreme Court viewed the statement, it constituted an attack upon the personal integrity of the Judges, rather than on official conduct. ** that*the use of the words 'racketeer influences' when applied to anyone suggest and imputes that he has been influenced to practice fraud, deceit, trickery, cheating, and dishonesty; that the expression that the judges have enjoyed 300 days vacation out of 19 months suggests and connotes a violation of the 'Deadhead' statute ** Public Payroll Fraud; that 'Other expressions set out in the Bill of Information connote malfeasance in office. ** The expressions charged contain personal attacks upon the integrity and honesty of the 8 judges. ** The accusation concerned the judges' conduct of the business of the Criminal District Court. (p.77) Of course, any criticism of the manner in which a public official performs his duties will tend to affect his private as well as his public reputation. The New York Times rule is not rendered inapplicable merely because an official's private reputation, as well as his public reputation is harmed. The public-official rule protects the paramount pub-

lic interest in a free flow of information to the people concerning public officials, their servants. To this end anything which might touch on an official's fitness for office is relevant. Few personal attributes are more germane to firness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character."***

(p.77) "Applying the principles of the New York Times case, we hold that the Louisiana statute, as authoritatively interpreted by the Supreme Court of Louisiana, incorporates constitutionally invalid standards in the context of criticism of the official conduct of public officials. (p.78) For contrary to the New York Times rule, which absolutely prohibits punishment of truthful criticism, the statute directs punishment for true statements made with "actual malice" ** And "actual malice" is defined in the decisions below to mean hatred, ill will or enmity or a wanton desire to injure. ** The statute is also unconstitutional as interpreted to cover false statements against public officials. The New York Times standard forbids the punishment of false statements unless made with knowledge of their falsity or in reckless disregard of whether they are true or false.** (p.79) The test which we laid down in New York Times is not keyed to ordinary care; defeasance of the privilege is conditioned, not on mere negligence, but on reckless disregard for the truth. REVERSED."

The case so frequently referred to in the above quotation is N.Y.Times v.Sullivan,376 U.S.254-305, decided March 9,1964, in which a half million libel judgment was reversed by the Supreme Court which held that a state cannot under the 1st & 14th Amendments award damages to a public official for defamatory falsehood relating to his official conduct unless he proves"actual malice"- that the statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false. Justice Brennan for the Court said:

(p.272) "Injury to official reputation affords no

"more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved this court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. Bridges v. California, 314 U.S. 252. This is true even though the utterance contains "half-truths" and "misrepresentation." (Citation) Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. (2 citations) If judges are to be treated as "men of fortitude, able to thrive in a hardy climate (1 citation), surely the same must be true of other government officials, such as elected city commissioners. Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations."

These two U.S. Supreme Court decisions were made and published some 2 or 3 years before February 1967 when disbarment proceedings were instituted against the appellant. In view of the nation-wide notoriety & publicity attending both cases reversing state judgments held to be in violation of the FIRST AMENDMENT rights to freedom of speech and of the press, and in view of the conceded sincerity of the appellant and the absence of any sign or degree of malice or disregard for the truth, recklessly on his part (p.3, 2d par.), all four judges should have known that they were totally without jurisdiction to initiate such proceedings. The reasoning of the Court in Phelan v. Bradbury Corp., 7 F.R.D. 429, 431 (1947 D.C.) helps to clarify this jurisdictional point. In the Phelan case two U.S. Supreme Court decisions rendered subsequent to a District Court decision on the same point were held to make the latter voidable; but if the 2 Supreme Court decisions had preceded District Court action, the latter would have been void for lack of jurisdiction, because it would have had no power to act contrary to Supreme Court rulings.

This same Constitutional violation of appellant's 1st Amendment right to freedom of speech was set up

by him in his answer on June 12 as his FIRST AFFIRMATIVE DEFENSE (177) and was again incorporated in par.4 (d) of his June 30 affirmation in support of motion to vacate disbarment judgment (199) as follows:

> "Respondent's constitutional right to freedom of speech under the FIRST AMENDMENT cannot be violated by disbarment or the slightest disciplinary action of this court, particularly when no base or unworthy motives are involved, no intimidation, no indecent language, no moral turpitude, fraud or dishonesty, no deceit, betrayal, bad faith, no excessive fees or malicious conduct - nothing but a respectful statement of overt acts. For two clean-cut cases on this subject, see FIRST DEFENSE and quotations from the cases in par.2 of FIFTH DEFENSE. (See also Citation 9 & par.2 of 3rd DEFENSE."

These various citations are as follows:
Re Hart, 104 Minn.88 (1908), 17 L.R.A.(N.S.) 585,591
State ex rel.v.Circuit Court, 97 Wis.1,12;72 N.W.193
Ex Parte McLeod (D.C.) 120 Fed.130,136
Ex Parte Steinman, 95 Pa.220. Re Pryor, 18 Kan.72,76
Austin's Case, 5 Rawle (Pa.) 205
Patterson v.Colorado, 205 U.S.454,463, where court said:

> "When a case is finished courts are subject to the same criticism as other people." Following quote from Harlan dissent: "The public welfare cannot override constitutional privileges, and if the rights of free speech and of a free press are, in their essence, attributes of national citizenship, as I think they are, then neither Congress nor any State since the adoption of the 14th Amendment, can by legislative enactments or by judicial action impair or abridge them. In my judgment the action of the court below was in violation of the rights of free speech and a free press as guaranteed by the Constitution."

Under the Garrison and New York Times decisions, Judges Timbers and Blumenfeld had no power to initiate disciplinary proceedings against appellant unless they could prove both the falsity of the charges against

the 8 judges and the reckless disregard of the truth by the appellant. They couldn't and didn't prove either. No such burden of proof rested upon the appellant, but he voluntarily presented 38 pages of documents and 3 EXHIBITS aggregating 160 pages, or 198 pages total, which were analyzed in his Third Defense and on pages 4, 5, and 6 supra to provide proof of the truth as to the 8 judges which was called in question. The absence of malice and the lack of abusive or other improper conduct of appellant toward the 8 state judges being conceded in the last paragraph of the original MEMO filed by the U.S.Attorney (81) leaves the District Court without jurisdiction either to initiate or pursue this proceeding.

OTHER CONSIDERATIONS VERIFYING LACK OF JURISDICTION

The complete IMMUNITY of appellant from harassment for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law should have blocked this proceeding long before it was ever filed, and is a complete bar to any adverse judgment of disbarment such as that of June 20,1967. See Spalding v.Vilas, 161 U.S.483,497 (1896) where Justice Harlan said:

> "The authorities, it was said, are clear, uniform & conclusive, that no action of libel or slander lies , whether against judges, counsel, witnesses or parties for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law."

Every word written or spoken by the appellant in said Complaint #11,551 was pronounced in the ordinary course of his duty to his clients, imposed upon him by CANONS 29 & 15 of Professional Ethics and exempts him from all past, present and future harassment, defamation and prosecution at the hands of the federal district court or any other tribunal. He did not exceed his duty in any particular. It was the illegal seizure of a jurisdiction they knew they did not possess by the full bench of the State Supreme Court twice in succession which provided the bottle-neck effectively blocking

and evading the plaintiffs' constitutional rights and rendering effective all of the misdeeds of the other defendants, which was the outstanding overt act in the entire history of the case, and under CANON 15 could not have been omitted by the appellant. See SECOND DEFENSE (177) · How far a member of the bar is entitled to go in comment upon such an extraordinary state of affairs involving judges is well expressed by the opinion in Thatcher v.U.S.,212 Fed.801 (1914):

"We cannot think that a lawyer citizen's criticism of such a candidate must needs be confined to what is 'decent and respectful.' His criticism may be as indecent and disrespectful as the facts justify.** When expressions of opinion, they are permitted,if in good faith; and where statements of fact,they may be made,if true,or in good faith and with reasonable cause believed to be true, but they are forbidden if the derogatory fact allegations are false,and are by the utterer known, or with ordinary care should be known to be false."

And in Bauers v.Heisel,361 Fed.2d 581,591 (C.A.3,1966) · the court deprives judges of immunity who act outside their jurisdiction, and said:

"The clear-absence versus mere-excess-of jurisdiction distinction has,in substance,been adopted and applied in Civil Rights Act cases brought against judges and other judicial officers.(4 citations) Because immunity is conferred on an individual solely by virtue of the office he holds, reason requires us to adopt a rule which does not provide immunity for those acts which are done clearly outside the authority or jurisdiction of the office."

The lack of jurisdiction in the federal courts to impose sanctions on counsel who are fearless and vigorous in performance of duty is reflected by Justice Jackson's comment in the disbarment case of Sacher v.U.S., 343 U.S.1 (1952) at pages 13-14:

"But that there may be no misunderstanding,we make clear that this Court,if its aid be needed,will unhesitatingly protect counsel in fearless,vigorous & effective performance of every duty pertaining tothe

office of the advocate on behalf of any person whatsoever."

II. HAS JUDGE BLUMENFELD SO CONDUCTED HIMSELF AS TO BE DISQUALIFIED TO SIT ON THIS CASE, THUS RENDERING HIS JUDGMENT VOID ?

The facts of his conduct are substantially covered supra on pages 6, 7, 8 & 9. Judge Blumenfeld had already exhibited strange behavior for an impartial judge by completely ignoring, in his April 24th denial of the MOTION TO QUASH, the 38 pages of documents and letters which he had voluntarily admitted as evidence at the hearing on April 3rd. He likewise ignored all 3 EXHIBITS, A, B & C, which he had admitted, except that he did refer to "B" for the useless purpose of pinning on respondent the disclosure of Albert L. Coles as the anonymous judge mentioned in par.20 as having aided and abetted attempted subornation of perjury, not realizing that the U.S.Attorney had torn the cloak of anonymity from Coles in his MEMO. And to top it all he completely ignored his mandatory duty under Rule 12 (b) to treat the Quash motion as one for summary judgment. In addition, in "I", he actually altered the allegations and claims of the Complaint as to the 7 judges acting without jurisdiction so as to make it appear they were merely being accused of ruling contrary to the plaintiffs' contentions, which was nothing more or less than plain falsehood, which gave him a chance to declare "There is no respectability or reason to that argument." Of course not, that wasn't the argument!

Under his heading "II" he kept harping on allegations of so-called "criminal conspiracy" in the complaint, as if that was an important point of great consequence. In view of the Thatcher case on the preceding page and the Garrison & New York Times cases, and the citations supra on page 15, the point has no bearing on a decision. It is a matter of complete indifference as to whether a criminal conspiracy is alleged or not. The truth or falsity of the overt act is of some importance, but even complete falsity is not conclusive in the absence of malice or reckless disregard of the

truth, and we have already seen that absence of malice is conceded in the last paragraph of the U.S.Attorney's MEMO. However, it has already been shown supra at the bottom of page 2 and top of page 3 that it is the overt acts of the 8 state judges which are recited in Complaint #11,551,and in no instance is the word "criminal"applied to them. But in par. 2-B,12th line & par.18,last line the conspiracy was designated as a civil one. And the construction and meaning of the writer is regarded as controlling in the following two state cases:

Ex parte Biggs, 64 N.C.214 (1870) where Court said:

"An attorney had published in respect to a charge to a grand jury that it was 'almost identically similar with the one delivered here 6 months since,with this important exception: His Honor seems to have somewhat deserted the profane poetical masters and confined most of his quotations to the Holy Scriptures,a happy omen, if it is possible to believe anything happy in such a character.' The attorney was disbarred by the lower court, but upon appeal Pearson, Ch.J. said"The proceeding is one of a peculiar nature, of necessity. The court is to some extent a judge in its own case; hence when the respondent submits to 'try himself' & a disavowal is made on oath, the court accepts it, & is not allowed to call in question the truth or sincerity of the disavowal.' The respondent having disavowed any criminal intention, the rule to show cause was discharged."

In re Wooley, 11 Bush (Ky.) 111 (1875) The court said:

"We recognize to the utmost reasonable limit of its application the rule that a supposed contempt consisting in mere words which are apparently intended to be scandalous and offensive, but which are at all susceptible of a different construction, may be explained or construed by the speaker or writer,and that upon his sworn disavowal of an intention to commit a contempt, proceedings against him must at once be discontinued. But this rule does not control where the matter spoken or written is of itself necessarily offensive and insulting."

The rest of Judge Blumenthal's ruling on April

24th is so completely answered by the Garrison case in 379 U.S.64, that there is no need to waste more time on it. His denial on May 17th (163) of an extension of time to plead or answer by belittleing the need of library research which is so essential in a novel proceeding of this sort, and his threat to treat as an admission of guilt any delay in answer beyond 5 days, is further evidence of a distorted view of the administration of justice and intelligent preparation to meet on a high plane outrageous charges which have no basis nor any law to support them. His unexpected denial of the motion for a more definite statement to overcome the vagueness and ambiguity of pars. 2 & 3 of the Order to show cause, encountered venom and sarcasm openly used without valid reason or semblance of fairness.

His RULING of May 31st (174) on the motion for summary judgment kicks over the traces of orderly procedure completely when he states "No more'motions'will be ruled upon in open defiance of a U.S.Supreme Court decision in Holt v.Virginia,381 U.S.131,136-137(1965) which had been on his desk since March 20 on page 10 of the Motion to Quash and appears also on page 7 supra This was the climax and sealed his disqualification as an impartial judge in this case. If any court could possibly doubt his disqualification after this defiance of the Supreme Court rulings as to due process, his fabrication of a mammoth falsehood in his judgment of disbarment on June 20 should suffice to seal his disqualification forever in the eyes of any court so far as the appellant and his 3 plaintiff clients are concerned. That renders his judgment null and void by universal law. And it will be noticed from a perusal of the excerpts printed in the Appendix herewith of the hearing on June 20 that appellant did not waive his constitutional right to an impartial judge in any manner at the hearing, but stood on his rights and asserted them repeatedly despite the harassment of the Judge.

III. WAS IT AN ABUSE OF DISCRETION FOR JUDGE BLUMENFELD TO FABRICATE A FALSEHOOD UPON WHICH TO BASE A JUDGMENT OF DISBARMENT ?

The circumstances and facts attending this fabrication of a falsehood are related in the foregoing pages 4 to 8. The opinion itself is in the Appendix. The answer to this THIRD QUESTION is one peculiarly within the province of this Court. It is not fitting for the appellant even to attempt an answer. Proof of the fabrication is now before this Court. Citation of authorities is out of place. None are offered.

C O N C L U S I O N

Upon the reasoning and authorities cited in the preceding pages, it is respectfully submitted that the judgment of disbarment pronounced by the District Court be reversed and vacated, and that it be declared null and void for lack of jurisdiction as well as for the abuse of discretion and the disqualification of Judge Blumenfeld to act as an impartial judge in this proceeding; and for the violation of appellant's constitutional rights to freedom of speech and to due process.

Respectfully submitted,

Loring J. Whiteside

Dated: October 11, 1967
Woodbridge, Connecticut

Loring J. Whiteside
Appellant, pro se,
South Pease Road, Woodbridge,
Connecticut 06525

In re Loring J. Whiteside Civil Case #11,798

EXCERPTS FROM 7-page TRANSCRIPT OF HEARING ON OCTOBER 30,1967 BEFORE JUDGE BLUMENFELD ON MOTION TO VACATE APPROVAL OF SUPERSEDEAS BOND FURNISHED BY RESPONDENT ON JULY 20,1967

U.S.Attorney , Jon O.Newman, for the Government.

(p.2) MR.NEWMAN: This is the Government's motion,your Honor, not the Government formally, but my motion in the matter of Loring J. Whiteside,Civil No.11,798. ****

(p.4) THE COURT: Do you wish to be heard,Mr.Whiteside?

MR.WHITESIDE: I do not, your Honor.

THE COURT: Well, alright. Then I will rule on this motion. ***** (p.5) I had previously indicated that the Rules of Civil Procedure have no applicability to disbarment proceedings, so that the bond provided here insofar as it refers to the rules would be a nullity to effect a stay. **** Accordingly, I rule that the bond filed on July 20,1967 does not operate under the rules to effect a stay of the Court's order.*** (p.6) That is the only matter scheduled for ten o'clock this morning.

MR.WHITESIDE: If your Honor please, there was a motion filed in the clerk's office this morning for your disqualification. Has that been given to you yet ?

THE COURT: Well, it may have come in the mail, Mr.Whiteside, but it is not on the calendar for today.

MR.WHITESIDE: No. I filed it just a few minutes ago before the court opened and asked the clerk to see that you got a copy. I gave a copy to Mr.Newman.

THE COURT: Suppose it had. You filed a motion for disqualification, is that right ?

MR.Whiteside: I did, your Honor.

THE COURT: I regard it as frivolous and deny it.

MR.WHITESIDE: Have you read it, your Honor ?

THE COURT: Yes, I read it.

MR.WHITESIDE: Oh. All right.

I hereby certify that the foregoing is a true and correct transcript of the original notes as recorded by me before the Honorable M. Joseph Blumenfeld, U.S.D.J. on Monday, October 30,1967. (Signed) Benjamin R.Sanders

Official Reporter

UNITED STATES COURT OF APPEALS - FOR THE 2nd CIRCUIT
In re LORING J. WHITESIDE Docket No. 31,654

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UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE CIVIL NO.11,798.
RULING ON PETITION TO QUASH - JUDGE M.J. BLUMENFELD
April 24, 1967

Pursuant to an order of the Chief Judge of this district, a petition for appropriate disciplinary proceedings against the respondent was filed by the United States Attorney for the District of Connecticut based upon allegations made by respondent in pleadings filed by him in this court in a civil suit.(1) Respondent has filed a motion to quash the resulting order to show cause why he should not be disciplined.

Since the entire basis of the petition for disciplinary action against the respondent is a complaint filed by him in this court, which alleges criminal conduct by several state court judges, his motion to quash these proceedings and the arguments he made in support of it were primarily directed to an attempt to show that the complaint did not accuse several judges of criminal activities in the course of their official duties.

The allegations in paragraph 11 of that complaint that "certain Superior Court Judges, certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal the murder and perform overt actions of their own..." should be read

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Note (1) Tkaczyk v. Gallagher, Civil No.11551, filed Aug.5, dismissed, 259 F. Supp. 584 (D.Conn.1966), appeal dismissed from bench by Second Circuit Court of Appeals, Sept.19,1966. The prelude to this litigation has burdened the Connecticut state courts repeatedly, e.g. Tkaczyk v. Levine, Civil No.97790 (Superior Court, New Haven County) appeal dismissed, 151 Conn.728,197 A 2d 942(1963), cert denied, 35 USL Week 3366 (U.S. Apr. 18, 1967 (Misc.No.1372); 151 Conn. 732(1963) 733, 734, 197 A 2d 943(1964), and also the Supreme Court. (By Mr. Justice Harlan, application for stay denied, Dec. 13, 1963; reapplication for stay denied, Feb.4,1964; application for stay denied, Aug.12,1966.)

with the allegation in paragraph 3 that "the 22 defendants (including the judges referred to in paragraph 11) conspired and agreed together, each in his own particular field and time for action... to defraud and deceive the plaintiffs and to conceal and suppress the true cause of ... the sudden and untimely death of 45 year old Olga Gallagher. Said conspiracy sought to prevent public disclosure and thorough investigation of the circumstances attending her death, which ... indicate a premeditated murder ..." (Emphasis added).

I

To escape the effect of the clear charge in the emphasized portion above that the judges acted in the course of their official duties, the respondent argues that the judges had, by their behavior, forfeited their positions as judges. The judges did not become any the less judges because they ruled on matters presented to them contrary to the contentions of the respondent's clients. There is no respectability or reason to that argument. See, e.g., Garfield vs. Palmieri, 193 F. Supp.137, 142 (S.D.N.Y. 1961), aff'd 297 F.2d 526 (2d Cir.), cert.denied, 369 U.S. 871 (1962).

II

Not content with charging that the action of each of the judges in ruling against the respondent's clients prevented disclosure of premeditated murder, the respondent alleged that they "conspired and agreed together" to do so. He argues that since these allegations were made in a civil suit (2) their "conspiracy" should be understood only in that sense.

Note (2).But it cannot legally be read in that sense because "there is no such thing as a civil action for conspiracy." Cole v. Associated Constr.Co., 141 Conn. 49, 54, 103 A.2d 529, 532(1954). An allegation of "conspiracy" is only surplusage in a civil action. Koblitz v. Baltimore & Ohio R.R., 154 F.Supp.367, 371 (S.D.N.Y. 1958), aff'd 266 F.2d 320 (2d Cir.), cert. den,361 U.S.830(1959).

There is no need to elaborate upon the meaning of a conspiracy in the criminal law. Whether the allegation of "conspiracy" was merely an ambiguity used only to express a blend of civil and criminal meanings in the complaint presents a subtlety too elusive, even for persons skilled in linguistic interpretation. Giving it the most favorable reading for the respondent, the suggestion that the judges were parties to a criminal conspiracy is obvious. Read as a lawyer or judge would read it, it charges a crime. Whether the respondent so meant it, may have a bearing on the measure of discipline - if any - which may be imposed after this petition has been heard on the merits.

III

There is no ambiguity whatsoever in the charge in paragraph 20 that a Superior Court judge aided and abetted a named attorney "in attempted subornation of perjury and an attempt to extort a ransom under false pretenses.". There can be no doubt that this is a charge of criminal conduct sharply presented in black and white terms. The charge is amplified in detail through the incorporation by reference of a transcript of a state court hearing on a motion for equitable relief. That transcript - introduced as Exhibit B by the respondent at the hearing on the present motion - unmistakeably identifies the judge referred to.

While identification of judges may be relevant in order to support a possible claim by one of them for damages based on published material libelous per se, cf. Hope v. Hearst, 294 F.2d 681 (2d Cir. 1961), cert.denied, 368 U.S. 956(1962), what matters even more in this proceeding is that the invidious conduct charged to one of them is, at the same time, ascribed to the judicial office he occupied in the state court system.

The Preamble to the Canons of Professional Ethics, Connecticut Practice Book (1963), begins:

"In America, where the stability of courts and of all departments of government rests upon the appro-

> val of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed...and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration."

And the very first canon, entitled The Duty of the Lawyer to the Courts, begins:

> "It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."

In other words, the allegation that the judicial office was criminally administered is as impermissible by one bound by the "canons" as an allegation against the character of one who happens to be a judge.

IV

Finally, the respondent claims that the canons which he is accused of violating are not "prescribed or adopted" by this court and accordingly cannot be used as a basis for disciplinary proceeding. This claim ignores reality. Rule 2 of the Rules of this court explicitly "recognize the authority of the 'Canons of Professional Ethics' of the American Bar Association." He argues that recognition and adoption are separate and distinct acts. The incorporation of its recognition of the authority of those "Canons of Professional Ethics" into the very same rule of this court under which the respondent was admitted to practice before it validly binds the respondent to conform his conduct to those "canons." Nor is his argument that nothing mattered except noble intentions vis-a-vis his clients a valid ground for dismissing the petition.

The motion to dismiss the petition is denied.

SO ORDERED.

Dated at Hartford, Connecticut, this 24th day of April, 1967.

M. Joseph Blumenfeld
United States District Judge

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RULING ON MOTION FOR EXTENSION OF TIME
JUDGE M. J. BLUMENFELD - May 17, 1967

The respondent moves for an extension of time within which to file his answer to the Petition for Disciplinary Proceedings filed in this court on February 1, 1967, and served on him under an Order to Show Cause issued the same day. On March 20, 1967, well after the time to plead or answer, the respondent filed a Motion to Quash which the court entertained. On April 24, 1967, after hearing, the Motion to Quash was denied.

The respondent was ordered to file a written answer to the specific allegations in the Order not later than February 20, 1967. He may deny any of the facts set forth in the Order or allege any other material facts. Research in the law libraries is not a necessary prelude to that. Unless an answer shall be filed within five (5) days the factual allegations in the Order to Show Cause will be taken as admitted by the respondent. SO ORDERED.

Dated at Hartford, Connecticut, this 17th day of May, 1967.

M. Joseph Blumenfeld
United States District Judge

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RULING ON MOTION FOR A MORE DEFINITE STATEMENT
JUDGE M. J. BLUMENFELD - May 17, 1967

The respondent moves for an order directing the United States Attorney to file a more definite state-

ment representing "(t)hat paragraphs 2 and 3 of the Order to Show Cause are so vague and ambiguous that it is impossible for the respondent to frame a responsive pleading without a more definite statement of the exact wording in Complaint #11551 upon which the U.S. Attorney relies and to which respondent must answer, and against which he must defend."

Paragraph 2 says:

> "That said complaint (filed by the respondent in this court in Tkaczyk v. Gallagher, Civil No.11551, as counsel for plaintiffs therein) alleged criminal conduct on the part of several named and unnamed judges of the State Courts of Connecticut."

It cannot be denied that many words were used in the complaint; many incidents were described. But the terms in which he couched the claims of his clients were his own. This is not for him an exploration of hitherto unknown territory.

The Order to Show Cause was issued by Chief Judge William H. Timbers, not by the United States Attorney.

The complaint, No.11551, filed in this court was drafted by the respondent; yet he, as its ancestor, now represents that he ought not be held to understand what he himself wrote. It is not for the United States Attorney to give meaning to the allegations in that complaint. He is not required to recast it in a phrase-by-phrase, or sentence-by sentence, rendering - which might convey a more concise meaning; but at the risk of marring the artistry of the original. The motion for a more specific statement is denied.

Dated at Hartford, Connecticut, this 17th day of May, 1967.

M. Joseph Blumenfeld
United States District Judge

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RULING ON "MOTION FOR RULING AS TO SUMMARY JUDGMENT" AND "MOTION FOR INSPECTION OF TRANSCRIPT AT RESPONDENT'S OFFICE."

JUDGE M. J. BLUMENFELD - May 31, 1967

These disciplinary proceedings against Loring J. Whiteside were commenced by an Order to Show Cause issued on February 1, 1967. Since that time the respondent has filed multifarious papers and motions. Out of courtesy to the respondent and to assure beyond peradventure of any doubt that he would receive full and complete due process protection, the court has given consideration to these "motions." On April 27th, the court entered a written ruling on his Motion to Quash, On May 17th, another written ruling was entered on his Motion for a More Definite Statement, and on the same day another ruling was entered on his Motion for an Extension of Time. That last ruling ordered him to file an answer within five days. Instead, on May 22nd, he filed (1) a two page Motion for Enlargement of time to File Responsive Pleading; (2) a five page Motion for Ruling as to Summary Judgment; and (3) another Motion for Inspection of Transcript in the court's file at his own office. It now appears that the respondent would carry on this pleading game interminably.

It is perfectly clear that his so-called "Motion for Summary Judgment" was rejected. No further ruling is necessary. His Motion for permission to inspect the transcript at his own office is denied. It is availabld to him at the Clerk's office, as it is there to any one else.

The game has come to an end. No more "motions" will be ruled upon. This is not an adversary proceeding. The Federal Rules of Civil Procedure are not applicable to disbarment proceedings. Coughlan v. United States, 236 F.2d 927 (9th Cir.1956); Alaska Bar Ass'n. v. Dickerson, 240 F.Supp.732 (D.Alaska 1965).

A hearing on the Order to Show Cause will be heard on Tuesday, June 20, 1967, at 10:00 A.M. in the North

Courtroom, Federal Court, Hartford, Conn.

Dated at Hartford, Connecticut, this 31st day of May, 1967.

M. Joseph Blumenfeld
United States District Judge

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OPINION OF JUDGE M. JOSEPH BLUMENFELD
ORDERING FINAL JUDGMENT OF DISBARMENT
Filed 3:40 P.M. - June 20, 1967

This matter came on for hearing before this court upon an order to show cause why Loring J. Whiteside should not be disbarred, suspended from practice or otherwise disciplined by this court. The order to show cause was issued on February 1, 1967.

I

Mr. Whiteside filed several motions among which were a motion to quash, motion for extension of time to plead, a motion for a more definite statement and a motion for summary judgment. Some were heard, and all were ruled on.

Within these motions, and again in an "Answer and Counterclaim to Charges in Order to Show Cause" he asserted that he had drawn and filed the complaint in Tkaczyk et al v. Gallagher et als., Civil No.11,551, in this court claiming damages against all of the Justices of the Connecticut Supreme Court and several judges of other courts. It is clear, and Mr. Whiteside does not deny, that the only basis for the claim against them arose out of the conduct of those judges committed while acting within their judicial roles. His claim that they lost their status as judges because of the rulings they made was rejected in this court's Ruling on Motion to Quash filed April 24, 1967.

He has freely admitted that the only evidence he had of the accusations he made against several judges

was contained in the record of the proceedings before them. At the hearing today he stated that he had no evidence to offer in support of those charges except what has already been offered and which is in the record.

In the complaint in Civil No.11,551, reiterated in the written material he has filed at several stages during this proceeding, he unequivocally charged Judge Coles of the Connecticut Superior Court with "aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretenses", and he also charged that "certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal (a) murder and perform overt acts of their own...to prevent public disclosure and thorough investigation of the circumstances, which...indicate (d) a premeditated murder..."

Mr. Whiteside has not demonstrated in any manner that he had any grounds or probable cause whatever for making such assertions. He presented no evidence or facts to support them. Those accusations are amply sufficient to demonstrate that Mr. Whiteside should not be a member of the Bar of this court. During these proceedings, he has failed to show cause why he should not be disbarred.

II

Yesterday, Mr. Whiteside filed a motion for my disqualification to sit on this matter,unsupported by any affidavit of bias or prejudice. When this gambit was employed against the other judges of the District Court of Connecticut, they withdrew from further participation in this proceeding. There is no reason why I should do so. The motion for disqualification of a judge is denied.

III

Another motion to dismiss for lack of jurisdiction was also filed yesterday. It is denied.

IV

Appended to Mr. Whiteside's Answer filed on June 12, 1967, is a "Counterclaim against Judges Timbers and Blumenfeld" based on the fact that this disciplinary proceeding was initiated against Mr. Whiteside. This is not an adversary proceeding in which a counterclaim may be made. The counterclaim should be stricken and it is so ordered.

V

Mr. Whiteside was admitted to practice law in the State of New York in 1913. He came to Connecticut in 1921. He practiced law in New York for about ten years, but he never practiced in Connecticut except to represent himself. He was never admitted to the Bar of Connecticut. When he sought admission to the Bar of this court in 1964, it was solely to bring and prosecute the case of Tkaczyk v. Gallagher. He does not maintain a law office in this state, other than his home. He never had, nor does he now have, any other clients. I have taken these facts into consideration.

IT IS ORDERED that Loring J. Whiteside be disbarred as a member of the Bar of this court, and that his name be hereby stricken from the roll of the attorneys who are authorized to practice in this court.

Dated at Hartford, Connecticut, this 20th day of June, 1967.

M. Joseph Blumenfeld
United States District Judge

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DENIAL OF "MOTION TO VACATE AND SET ASIDE JUDGMENT OF DISBARMENT

Filed 11:15 A.M. July 13, 1967
JUDGE M. JOSEPH BLUMENFELD

The respondent's "Motion to Vacate and Set Aside Judgment of Disbarment" is denied.

Dated this 12th day of July, 1967

M. Joseph Blumenfeld
U.S.District Judge

PAPERS & DOCUMENTS OF WHICH 3 XEROX COPIES ARE BEING FURNISHED FOR COURT USE UNDER RULES 16 & 15 (b)

1. The 4 pages of DOCKET ENTRIES in CIVIL #11,798

2. The 11 page MOTION TO QUASH including 3 pages of case citations & quotations; to which is annexed the 38 page APPENDIX filed on March 20,1967,hearon which was held April 3,1967 before Judge Blumenfeld.

3. 12 motion papers & other documents filed in Case #11,798, with filing dates all in 1967 as follows:

Mch.15. Affidavits of bias of Judges Zampano,Clarie & Timbers. (9 pages)
Mch.27. Motion for enlargement of time. (3 pages)
Apr. 3. 4 page outline of respondent's case at hearing on MOTION TO QUASH.
May 22. MOTION FOR RULING AS TO SUMMARY JUDGMENT.(3p.)
May 22. Motion for enlargement of time. (2 pp.)
Jun.19. Motion for disqualification of Judge. (2 pp.)
Jun.19. Motion for dismissal of all charges for lack of jurisdiction. (2 pp.)
Jun.30. Motion to Vacate Judg. of Disbarment.(8 pp.)
Jun.30. Motion for Disciplinary Proceedings vs. atty. Albert L. Coles for violation of 2 CANONS of Ethics. (2 pp.)
Jul.12. Motion for Reformation of Falsehood.(1 p.)
Jul.31. Motion for Action by U.S.Atty.with respect to perjury. (1 p.)
Aug.10. Motion to extend time to file Record on Appeal & to Docket same, pending a ruling as to effect of Garrison & N.Y.Times cases on jurisdiction of this Court in this proceeding.(1 p.)

UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE CIVIL NO. 11,798

ORDER TO SHOW CAUSE

This Court on September 12, 1966, pursuant to Rule 2(d) of the Rules of Civil Procedure of this Court, having directed the United States Attorney to conduct such investigation as he deemed necessary and appropriate to determine whether there had been a breach of professional conduct by Loring J. Whiteside, a member of the bar of this Court, as plaintiffs' counsel in a case pending in this Court entitled Tkaczyk v. Gallagher, Civil No. 11,551,* of such a character as to warrant disciplinary action by this Court; and

The United States Attorney, pursuant to said direction, having conducted such investigation and having submitted to the Court a petition that appropriate disciplinary proceedings against said Loring J. Whiteside be taken by the Court, and the United States Attorney having submitted to the Court a memorandum in support of said petition; and

The said petition and memorandum submitted by the United States Attorney (both of which are attached hereto and made part of this Order To Show Cause) having been considered by all of the judges of this Court; it is therefore

ORDERED that said Loring J. Whiteside appear, with counsel if he so desires, at an en banc hearing to be held by all of the judges of this Court on Monday, March 6, 1967, at 2:00 P.M., in the second floor courtroom of the United States Courthouse, New Haven, Connecticut, then and there to show cause why he should not be disbarred, suspended from practice or otherwise dis-

* Tkaczyk v. Gallagher, 259 F.Supp.584,587 (D.Conn. 1966), appeal dismissed by Court of Appeals, September 19, 1966.

ciplined by this Court for conduct in violation of Canons 1 and 32 of the Canons of Professional Ethics of the American Bar Association (Rule 2(f) of the Rules of Civil Procedure of this Court), specifically for the following conduct:

(1) That on August 5, 1966, Loring J. Whiteside filed a complaint in this Court in Tkaczyk v. Gallagher, Civil No. 11,551, as counsel for plaintiffs therein.

(2) That said complaint alleged criminal conduct on the part of several named and unnamed judges of the State Courts of Connecticut.

(3) That at the time he filed said complaint, Loring J. Whiteside had no knowledge of any facts bearing on the propriety or impropriety of the conduct of said judges of the State Courts of Connecticut other than the public record of the judicial actions said judges took or failed to take in connection with the case of Tkaczyk v. Gallagher in the State Courts of Connecticut.

(4) That the public record of the actions of said judges of the State Courts of Connecticut discloses actions taken by said judges in their official capacity which, even if erroneous, afford no basis for allegations of criminal conduct.

(5) The inclusion in the aforesaid complaint of allegations of criminal conduct on the part of judges of the State Courts of Connecticut constitutes gross disrespect of judges and judicial offices of the State of Connecticut, in violation of Canons 1 and 32 of the Canons of Professional Ethics of the American Bar Association.

and it is further

ORDERED that Loring J. Whiteside, personally or by counsel, serve on the United States Attorney and file with this Court, not later than Monday, February 20, 1967, a written answer to the specific allegations set forth above in paragraphs (1) through (5); and it is further

ORDERED that the original of this Order To Show Cause, together with the attached petition and memorandum of the United States Attorney, be filed with the

Clerk of this Court; and it is further

ORDERED that a copy of this Order To Show Cause, together with copies of the attached petition and memorandum of the United States Attorney, be served forthwith by the United States Marshal upon Loring J. Whiteside.

Dated at New Haven, Connecticut, this 1st day of February, 1967.

William H. Timbers
William H. Timbers
Chief Judge

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UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE

PETITION FOR DISCIPLINARY PROCEEDINGS

Jon O. Newman, United States Attorney for the District of Connecticut hereby petitions that the United States District Court for the District of Connecticut to conduct appropriate disciplinary proceedings against Loring J. Whiteside, a member of the bar of this Court, for conduct in violation of Canons 1 and 32 of the Canons of Professional Ethics, specifically, the inclusion, in a complaint filed by Loring J. Whiteside in Tkaczyk v. Gallagher, Civil No.11,551, of allegations displaying gross disrespect for judges of the courts of the State of Connecticut.

Jon O. Newman
Jon O. Newman
United States Attorney

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MEMORANDUM IN SUPPORT OF PETITION
FOR DISCIPLINARY PROCEEDINGS

1. On September 16, 1966, by order of Chief Judge

William H. Timbers I was directed pursuant to Rule 2 (d) of the Local Rules of the District Court, to conduct such investigation as I deem necessary and appropriate to determine whether there has been a breach of professional conduct by Loring J. Whiteside in the case of Tkaczyk v. Gallagher, Civil No. 11,551, of such a character and nature as to warrant disciplinary action by this Court.

2. Rule 2(d) imposes upon the United States Attorney the duty to "conduct such investigations as to the professional conduct of members of the bar as the court shall direct" and further provides: "If as a result of such investigations the United States Attorney shall be of the opinion that there has been a breach of professional ethics by a member of this bar, it shall be his duty as an officer of the court having special responsibilities for the administration of justice to file and prosecute a petition that the alleged offender be subjected to appropriate discipline."

3. Loring J. Whiteside was admitted to the bar of this Court on February 17, 1964. His application was in proper form, accompanied by two affidavits of members of the bar of this Court. Mr. Whiteside received his law degree from Harvard Law School in 1911 and practiced law in New York City and White Plains, New York from 1911 to 1921. He moved to Connecticut in 1921 and from that time until 1964 he did not practice law with the exceptions of (a) some minor matters affecting his own company which arose shortly after he moved to Connecticut, and (b) matters relating to a case in which he was defendant in 1959. In 1913 he was admitted to the bars of the State of New York, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit.

4. In 1959 Mr. Whiteside was prosecuted for criminal libel in the Court of Common Pleas for New Haven County. He was acquitted on 19 counts, found guilty on 4 counts, and sentenced to 20 days in jail and a fine

of $500. He was also sentenced to 5 days in jail for contempt of court occurring during the trial of the criminal libel case.

5. Apart from the above conviction and Mr. Whiteside's conduct in connection with Tkaczyk v. Gallagher, hereinafter set forth, nothing has come to my attention reflecting adversely on Mr. Whiteside's professional conduct.

6. The events leading up to Mr. Whiteside's appearance in Tkaczyk v. Gallagher began in May, 1962. Mrs. Julia Cravens had been referred to Mr. Whiteside as someone who might be willing to publish articles concerning litigation in which she and Mr. and Mrs. Sampson Tkaczyk, her mother and father, were then involved in the state courts of Connecticut. At that time the Tkaczyk family was represented by counsel. Mr. Whiteside explained to Mrs. Cravens that he could not represent the family as he was not a member of the bar of the State of Connecticut. However, he did offer to be of assistance in ascertaining facts. Thereafter, counsel withdrew. At this point Mr. Whiteside again advised Mrs. Cravens that he could not represent the family, but did offer to volunteer suggestions as to what he would do in their place, on the understanding that they would do as they wish and not consider him as their attorney. On this understanding, he did make some suggestions to them concerning their state court litigation and dictated some documents for their use.

7. Mr. Whiteside's formal representation of Mrs. Cravens and her family began in 1964, when a decision was reached to commence an action in the United District Court. Mr. Whiteside became a member of the bar of this Court so that he would be eligible to represent the family in this action.

8. On August 5, 1966, Mr. Whiteside filed a 12-page complaint in this Court in Civil Action 11551, Tkaczyk v. Gallagher. Plaintiffs were Mrs. Cravens and her parents, Mr. and Mrs. Tkaczyk. The twenty-two

defendants included lawyers, local police, a state's attorney, a deputy coroner, the clerk of the State Supreme Court of Errors, two judges of the State Superior Court, and all five judges of the State Supreme Court of Errors. This suit sought to plead in Paragraph 2 of the complaint a denial of civil rights, specifically the "right" of Olga Gallagher, the deceased daughter of Mr. and Mrs. Tkaczyk and sister of Mrs. Cravens, to underground burial in accordance with her religious precepts. This right was alleged to be in danger of infringement by Mr. Gallagher, the deceased's husband, who intended to have the body cremated.

9. The complaint also sought to plead in paragraphs 3-21 a conspiracy on the part of all twenty-two named defendants to conceal what was alleged to be the cause of Olga Gallagher's death, murder by her husband. Paragraph 3 read as follows:

> On or about December 5, 1961, and continuing without interruption up to the present moment, the 22 defendants conspired and agreed together, each in his own particular field and time for action, and with other persons whose names are unknown to plaintiffs, to defraud and deceive the plaintiffs and to conceal and suppress the true cause of, and the facts which for 2½ years had been leading up to, the sudden and untimely death of 45 year old Olga Gallagher. Said conspiracy sought to prevent public disclosure and thorough investigation of the circumstances attending her death, which in the privately expressed opinion of the deputy coroner, the defendant Sachs, and a proper appraisal of the events preceding and following the death, indicate a premeditated murder of the deceased by her husband, the defendant Gallagher.

Paragraphs 4-21 of the complaint allege various actions on the part of each of the twenty-two defendants, all alleged to have been taken in furtherance of the conspiracy alleged in paragraph 3.

10. Paragraphs 11, 20 and 21 allege conduct on the part of seven named state court judges and several unnamed judges, which allegations form the crux of this report. The judges are accused of acting in pursuance of the alleged conspiracy. Paragraph 11 makes this claim explicit by alleging that the judges "entered into the conspiracy to conceal the murder. . ." All of the conduct alleged to be conspiratorial is the taking of judicial action: rendering decisions in the course of the state court litigation or failing to render decisions to which Mr. Whiteside's clients believed they were entitled. The complaint goes far beyond the claim that state judicial action was erroneous and that the state court judges exceeded their jurisdiction; it specifically accuses them of criminal conduct.

11. Mr. Whiteside freely consented to being questioned by me concerning all aspects of his representation of Mr. and Mrs. Tkaczyk and Mrs. Cravens. He was specifically asked whether his allegations concerning the state court judges were based on any information in his possession other than the public record of what these judges said or wrote in the course of dealing with litigation before their respective courts. He replied that he had no such other information, and that his allegations were based entirely on the public record of the judges' actions. He expressed the conclusion that the judges must have been culpable because no other explanation was possible in view of the evidence before them at the time of their several rulings.

12. Mr. Whiteside's characterization of allegedly erroneous judicial action as criminal is illustrated by a single reference in paragraph 20: ". . . the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretenses."

Mr. Whiteside stated to me that his sole basis for charging this particular Superior Court judge with aiding and abetting the commission of crimes was the action and statements of the judge as set forth in a

transcript of a hearing held on October 25, 1963.

This hearing was held by then Superior Court Judge Albert L. Coles on a motion filed pro se by Mr. and Mrs. Tkaczyk seeking to have Walter A. DeAndrade, attorney for Olga Gallagher's husband, enjoined from taking various actions in connection with the state court litigation and also disciplined with respect to certain alleged unprofessional conduct. The motion papers indicate that the allegations against DeAndrade are based on DeAndrade's offer, at a previous stage of the state court litigation, to settle the case by agreeing to underground burial if Mr. and Mrs. Tkaczyk would pay the burial expenses and state on the record that their previous claims and allegations were untrue. Judge Coles denied the relief sought solely on the ground that it would be improper to take any action with respect to matters that were then the subject of a pending appeal before the State Supreme Court of Errors.

Mr. Whiteside's complaint in this Court does the following: the settlement proposal calling for payment of burial expenses is termed "an attempt to extort a ransom"; the settlement proposal calling for recantation of previous allegations is termed "attempted subornation of perjury" (on the theory that since the previous allegations are true, recantation of them would be perjury); and Judge Coles' action in denying the motion is termed "aiding and abetting DeAndrade in attempting subornation of perjury and an attempt to extort a ransom. . ."

13. In my opinion, the formal characterization of judicial action as criminal in the admitted absence of any facts even remotely tending to show anything more than that the action complained of was at worst erroneous is unprofessional conduct meriting appropriate disciplinary action.

Canon 1 of the Canons of Professional Ethics provides:

It is the duty of the lawyer to maintain towards the

courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

Canon 32 provides: "No client . . . is entitled to receive nor should any lawyer render any service or advice involving . . . disrespect of the judicial office . . . ."

While relevant allegations contained in pleadings are ordinarily privileged as against suits for libel, see 33 Am. Jur. Section 149, abusive and defamatory criticisms of judicial acts included in pleadings, arguments, and briefs have been the basis for disciplinary proceedings against the responsible attorney. Re Philbrook, 105 Cal. 471, 38 P. 511, 884; Attorney General v. Nelson, 263 Mich. 686, 249 N.W. 439; Re Robinson, 48 Wash. 153, 92 P. 929; Re Andreu Ribas, 81 Puerto Rico 87.

14. No attempt has been made in this report to verify any of the allegations made by Mr. Whiteside other than those alleging criminal conduct by state court judges. The circumstances involved in the other allegations are exceedingly complicated, and any detailed inquiry concerning them would entail a protracted proceeding going far beyond anything necessary to determine whether or not Mr. Whiteside's conduct constitutes a breach of professional conduct. In effect, my inquiry respecting Mr. Whiteside's allegations concerning state court judges has proceeded as if a demurrer were filed to all of the factual allegations of his complaint, other than those alleging criminal conduct

by state judges. Whether all the other allegations are true or false, the allegations against the state court judges nevertheless merit disciplinary action. Finally, I should observe that in my opinion Mr. Whiteside's conduct appears to be misguided rather than malicious. He sincerely believes his clients have been grievously wronged by a series of improper and unlawful events, including a murder. He has been candid and co-operative in discussing the case with me. Apart from the complaint filed in this case, he has not, to my knowledge taken any steps to be abusive or otherwise act improperly toward the state court judges. Nevertheless, the impropriety of the allegations previously discussed is too clear to be ignored.

Respectfully submitted,

Jon O. Newman

Jon O. Newman
United States Attorney

UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
SAMPSON TKACZYK and EVELYN TKACZYK, his wife,
and JULIA CRAVENS, his daughter, PLAINTIFFS
CIVIL ACTION NO. 11551
VS. KENNETH GALLAGHER, WALTER A. DeANDRADE, ROBERT A. ROUSSEAU, DR.STERLING P.TAYLOR, LEO T.BERNIERE, WALTER T. BERNIERE, NATHAN G.SACHS, HERMAN N.LEVY, PAUL A. SCHOLDER, ARTHUR B.O'KEEFE,JR., JAMES J. CORRIGAN, ARTHUR T.GORMAN, GEORGE R.TIERNAN, HERMAN LEVINE, EDWARD HORWITZ, JOHN HAMILTON KING, JAMES E.MURPHY, HOWARD W.ALCORN, CHARLES S.HOUSE, ELMER W.RYAN, JAMES P.DOHERTY, LEO PARSKEY, DEFENDANTS

August 24, 1966

AMENDED COMPLAINT

The plaintiffs herein amend their complaint by eliminating all of pages 1 and 12, and substituting therefor AMENDMENT pages 1 and 1-B and AMENDMENT page 12, there being no change in pages 2-11 of the complaint, nor in the addamnum paragraph on page 11. The Amendment also includes EXHIBITS "X" & "Y" which are annexed to the aforesaid 3 AMENDMENT pages.

The above named plaintiffs, by Loring J. Whiteside, their attorney, bring this their complaint against the defendants and for their claim respectfully show:

1. Jurisdiction is founded on the existence of one or more Federal questions as hereinafter more fully appears. The action arises under U.S.C. Title 28, Par. 1331 and involves primarily the First Amendment to the Constitution of the United States, preserving the free exercise of religion. The matter in controversy exceeds, exclusive of interest and costs, the sum of $30,000. The action also arises under Title 28, Sec. 1343 (3) of the U.S.Code, providing for actions to redress the deprivation under color of any law, statute, ordinance, regulation, custom or usage of any State of any right, privilege or immunity secured by the Constitution of the United States. And this action further arises under Rule 60 (b) 3 & 4 of the Federal

Rules of Civil Procedure, 28 U.S.C.A.; rendered possible after a 4½ year continuous effort to obtain recognition by the State Judicial Department, of the 1st Amendment right of Olga Gallagher, deceased, to underground burial as required by the church of her choice; which has completely exhausted State procedures or remedies, and leaves this cherished freedom a "will-o'-the-wisp" unless the Federal Court finds a way to enforce it.

2-A. The facts related in paragraph 20 of the complaint reveal that the 5 defendant Justices of the Supreme Court of Errors had no power to dismiss the plaintiffs' appeal before the record of the case was complete or ready for assignments of error or briefing in open defiance of long established practice rules, disregarding of which deprived the plaintiffs of due process of law and the equal protection of the law under the 14th Amendment, and rendered their judgment of dismissal void and of no effect for lack of jurisdiction. Such open defiance of practice rules, taken in conjunction with the string of falsehoods presented in open court by defendant DeAndrade, constituted extrinsic fraud and served to prevent the plaintiffs from presenting their cause of action to the court, the force and quality of which may be observed in the contents of EXHIBIT "Y" annexed hereto.

Various other instances of extrinsic fraud practiced by attorneys and judges upon the courts and the plaintiffs are set forth in the complaint and indicate how they succeeded in concealing 4 HANDWRITTEN LETTERS OF THE DECEASED OLGA GALLAGHER, set forth in EXHIBIT "X", annexed to the amended complaint herewith, which if presented to the court and openly and fairly considered on their merits, would have terminated this litigation in early December, 1961.

2-B. This action is brought for the issuance of a preliminary and final injunction to prevent the defendant Gallagher from cremating the body of Olga Gallagher in violation of her religious training and be-

lief in the Russian Orthodox Greek Catholic Church which absolutely forbids cremation as insisted upon by said Gallagher; and to enjoin him from claiming the right of cremation or any other privilege by reason of a judgment of dismissal rendered by the State Supreme Court of Errors on June 7, 1966 in appeal #5894 which was obtained by the practice of extrinsic fraud and thereby became void; and that he be further enjoined from pleading said judgment as res adjudicata or collateral estoppel of anything therein contained, pending the hearing and final determination of the issues herein; and this action is also brought for damages suffered by the plaintiffs as a result of a civil conspiracy among the defendants, whose wrongful acts have enabled said Gallagher to continue his infringement for the unprecedented period of over 4 years and 8 months, while said body is held in a cold storage vault at Evergreen Cemetery in New Haven, to the distress of both mind and body and spirit of the plaintiffs, her next of kin, who share the same religious belief held by their beloved daughter and sister, and are the only persons able and willing to uphold and enforce the Federal Constitutional right of the deceased to freedom of religion which is one of those freedoms which occupy a preferred position giving it a "sanctity and a sanction not permitting dubious intrusions."

3. On or about December 5, 1961, and continuing without interruption up to the present moment, the 22 defendants conspired and agreed together, each in his own particular field and time for action, and with other persons whose names are unknown to plaintiffs, to defraud and deceive the plaintiffs and to conceal and suppress the true cause of, and the facts which for 2½ years had been leading up to, the sudden and untimely death of 45 year old Olga Gallagher. Said conspiracy sought to prevent public disclosure and thorough investigation of the circumstances attending her death, which in the privately expressed opinion of the deputy coroner, the defendant Sachs, and a proper appraisal of the events preceding and following the death, indicate a premeditated murder of the deceased

by her husband, the defendant Gallagher.

4. In pursuance of said conspiracy, said defendant Gallagher, contrary to the provisions of Connecticut Statute 6-55, turned the body of his wife, Olga, which he claimed to have just found dead in bed, over to the defendant, Robert A. Rousseau, a funeral director, for immediate embalming, without notifying the medical examiner and letting him view and take charge of the body as required by said Statute 6-55, which subjected him under Statute 6-76 to a fine up to $500. or imprisonment up to one year, or both. At the same time said Gallagher indicated his intention of having the body cremated contrary to the teachings of the Roman Catholic Church in which he had been reared and of the Russian Orthodox Greek Catholic Church in which Olga had been trained. And up to the date of this complaint has upon numerous occasions refused to permit underground burial except for a limited period when he attempt to extort a ransom of some $1200 or more for the privilege, and later added a requisite that the plaintiffs commit wholesale perjury calculated to exonerate himself from any suspicion of murdering his wife, which rendered the privilege prohibitive.

5. In pursuance of said conspiracy, said defendant, Robert A. Rousseau, wilfully and unnecessarily touched and removed said body of Olga Gallagher to his establishment and completed embalming it about noon on said December 5th, without reporting the death to the medical examiner and getting a certificate of release from him for preparation on proper forms as required by Statutes 6-55 and 6-56, and thereby incurring the aforesaid penalties contained in Statute 6-76. Nor did he await a visit from the medical examiner before embalming, which destroyed much evidence of importance in arriving at a conclusion as to the cause of death. He was last requested by the plaintiffs on February 11, 1966 for some explanation or justification of his illegal actions, but has steadfastly ignored his legal obligation to do so.

6. In pursuance of said conspiracy, defendant Dr. Sterling P. Taylor, Medical Examiner and Health Officer of the Town of North Haven, delayed his viewing of the body until the noon hour on said December 5th after the embalming process had been completed, nor did he attempt to have the embalming postponed until after he had viewed the body and released it as required by law, nor did he or the coroner order an autopsy until such was demanded by the plaintiffs; nor did either of them order or conduct an inquest when an autopsy on December 6th, 1961 revealed the cause of death to be a 4 inch skull fracture behind the left ear, necessarily sustained within a week or 10 days of death, presumably on November 25, 1961. All of which subjected said Taylor to the penalties set forth in Statute 6-76 on several counts, and caused him to issue a certificate of death, erroneous in one or more particulars.

7. In pursuance of said conspiracy, defendants Leo T. and Walter T. Berniere, police chief and detective, presumably in charge of an investigation into the cause of said Olga Gallagher's death, failed to comply with the statutory requirement of Statute 6-55 and released the body for embalming which they knew involved the destruction of important evidence. They failed to ascertain, or to report at a hearing on December 11, 1961, the gangster history of defendant Gallagher, the principal suspect, his blackjack holdup of a gas station, his commission of 2 grocery store burglaries and his complicity in other crimes. They tried to dissuade the plaintiffs from insisting upon a thorough investigation, declared it would have to remain as an unsolved case, and went so far as to declare their unwillingness to arrest defendant Gallagher even if he admitted the murder of his wife, Olga, and refused in writing as late as February 16, 1966 to discuss or disclose any feature of their investigation, and conspired with defendants DeAndrade and Gallagher in various other fraudulent acts both before and after the death of decedent.

8. In pursuance of said conspiracy, defendant

Nathan G. Sachs, deputy coroner for many years, and attorney for the decedent from late June 1961 to the date of her death, assured the plaintiffs on December 7, 1961, and acquiesced therein up to February 4, 1966, that he was certain defendant Gallagher had murdered the decedent, his wife, and demonstrated to all 3 of them just how it had been done, and the motive. Thereby he gained the confidence of the plaintiffs; and although he knew they already had a very satisfactory attorney, he suggested they employ him as their attorney to represent them in the probate of decedent's estate, to which they assented, only to find that he betrayed them and misrepresented to them in so many ways, it was quite evident he made ulterior use of the truth so as to be in a better position to protect the gangster, Gallagher. He concealed the existence of Olga's will, gave the plaintiffs falsified excuses for failing to do what he had promised them, and concealed many convincing proofs of Gallagher's felonious behavior, all contrary to law and professional ethics and the duties of his public office; which in February 1966 said Sachs declined to rectify when urged to do so, and on April 29, 1966 he left the court room at high speed to avoid aiding the plaintiffs at a hearing in progress before Judge Parskey.

9. In pursuance of said conspiracy, attorney Walter A. DeAndrade, representing defendant Gallagher, presented fraudulent evidence at the hearing in probate court on December 11, 1961, to procure the appointment of his client as custodian of the body of the decedent, violated Canon 9 of professional ethics by communicating and negotiating direct with the plaintiffs, instead of their attorney, in an attempt to extort money out of them, contrary to Statute 53-360 and 54-60, under the false pretences that his client had the right to cremate the body of his deceased wife contrary to her religious training and belief, and intended to do so unless they paid a ransom consisting of all funeral expenses, despite her estate was amply able to pay them; and unless they absolved his client from all lia-

bility for injuries he had inflicted upon her in a maniacal attack upon her skull July 26, 1961 with the sharp edge of a full beer can and the blunt edge of a loaded flashlight, from which she was incapacitated to the day of her death. And on March 22, 1963 said DeAndrade, in violation of Statutes 53-143 and 54-60, added another requirement before said Gallagher would permit underground burial, which was that the plaintiffs would have to state on the court record that all of the allegations and claims set forth in their 50 page affidavit (pp. 52-102, Printed Record of State Supreme Court case #5427, Tkaczyk vs. Levine)are false and untrue, which, if accepted, would have subjected the plaintiffs to criminal prosecution for perjury. And up to date he has refused to permit underground burial except upon said impossible terms.

10. In pursuance of said conspiracy said DeAndrade conspired with defendant Edward Horwitz on or about September 1965 to defraud the plaintiffs out of certain monies which they both knew DeAndrade and his client, Gallagher, were not entitled to receive, and endeavored to entice attorney Henry Istas to take part in the defrauding process, which he repudiated as soon as he was aware of the corruption and felonious conduct involved. Upon various other occasions said DeAndrade, alone or in conspiracy with defendant Horwitz, resorted to falsehood in 1966 and before, to deceive various Superior Court Judges and State Supreme Court Justices on material questions of law and fact.

11. In numerous instances certain Superior Court Judges, certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal the murder and perform overt acts of their own, attributable in some instances to their desire to protect from exposure the increasing number of prominent attorneys and of the State Judiciary and others who had gradually been sucked in and become involved in the matter; but in view of the total immunity of judges from civil liability to litigants whom they have defrauded with malice but have acted within their juris-

diction, the names of some of the judges and justices, who have aided and abetted the conspiracy in this case with overt acts, are not set forth herein, nor are they made parties defendant. However such evidence presented at the trial will contribute to a clearer vision of the extent to which over 4½ years of litigation can extend the conspiracy, until it embraces even official court reporters and activities of the County Bar Association itself.

12. In pursuance of said conspiracy defendant Horwitz in his dual clerkship of the Superior Court and Supreme Court of Errors, both of New Haven County, has sought on many occasions in the court proceedings of this case to obstruct justice by going beyond his administrative role of strict neutrality and to influence judicial action and exercise judicial functions even in the face of judicial rebuke therefor. On numerous occasions he has exercised arbitrary and illegal authority in rejecting and processing motions particularly since January 1966. So powerful is his influence over the judiciary that on one occasion on March 22, 1963, he accomplished a complete reversal of a prominent judge's decision by responding instantly to a summons for help from defendant DeAndrade, conveyed by defendant Levine.

13. In pursuance of said conspiracy, defendant Herman N. Levy, upon recommendation of the Dale Detective Agency, and after taking time to investigate the merits of the case, entered into a contract to act as attorney for the plaintiffs to have defendant Gallagher declared an unfit person to act as custodian of his wife's body and thus accomplish underground burial, for which he set $250. as his fee and another $250. to procure the arrest and prosecution of said Gallagher for aggravated assault on his wife, Olga, on July 26, 1961; and to tie up her estate monies because of the homicidal injuries she had sustained as a result of that assault, the latter fee of $250 to be refunded if the two tasks were not accomplished. After receiving payment of $475. of the total fee, said Levy fraudulently

informed the plaintiffs there was no chance of having Gallagher declared an unfit person, concealed overwhelming evidence in his files with which he could easily and quickly carried out his contract, failed deliberately to perform either of the other two tasks, and was caught with his associate attorney, Paul A. Scholder, in a series of falsehoods which neither of them made any attempt to reform or explain; nor has said Levy returned the $475. fee, or any part of it, up to the date of this complaint, although duly requested to perform his contract or refund the fee, both of which he and said Scholder declined to do in a joint communication under date of February 3, 1966.

14. In pursuance of said conspiracy, defendant Paul A. Scholder, by invitation of defendant Levy, and the acquiescence of the plaintiffs, undertook to perform the 3 tasks assumed by said Levy as set forth in the preceding paragraph, but abandoned all 3 of them; and after being caught in a series of falsehoods, said Scholder and Levy were both permitted by the court to withdraw their appearances for the plaintiffs on September 22,1962 against the unheeded and unread protests of the plaintiffs, and after attempting to aid and abet defendant DeAndrade to coerce from the plaintiffs a ransom for his client Gallagher of around $1200., they both slid out of the case still clutching the $475. fee which they had extracted under false pretences and held on to, despite their breach of contract, and multiplicity of fraud.

15. In pursuance of said conspiracy, defendant Arthur B. O'Keefe, Jr., after promising plaintiffs to give them a copy of the will he drew for said Olga Gallagher, changed his mind after an associate lawyer in his office had a conversation with defendant Sachs, and then treated the plaintiffs so rudely as to constitute attempted intimidation, denying he ever drew such a will. Soon thereafter a phone message, purporting to be from a secretary employed in said O'Keefe's office, confidentially assured plaintiff Cravens that her mother had received rough treatment in being denied the

document she had requested, and suggested they refer the matter promptly to the Grievance Committee. Twice thereafter defendant Scholder assured the plaintiffs they could get an unsigned copy of the will at O'Keefe's office, but when they asked for it and O'Keefe confronted Scholder, the latter denied having so assured the plaintiffs, and thereby set off a serious deterioration of the attorney-client relationship between Scholder-Levy and the plaintiffs. To the date of this complaint said O'Keefe, contrary to the spirit and intent of Statutes 45-164 & 45-165, has persisted in concealing the contents of the will he drew for Olga, and admitted having drawn it prior to his aforesaid indirect contact with defendant Sachs. It was the repugnance to Olga of a personal relationship defendant O'Keefe sought to impose upon her in June 1961, and his senseless belaboring of her when she resisted his advances, which compelled her to seek new counsel for her divorce action against defendant Gallagher, and led her on or about the end of June 1961 to engage defendant Sachs as her attorney for that divorce. Defendant O'Keefe's letter to plaintiffs of March 7, 1966 ends any hope of reconciling Scholder's representations about the will with those of O'Keefe, or O'Keefe's first representations with his last.

16. In pursuance of said conspiracy, defendant James J. Corrigan, although sworn to the faithful performance of his duties as coroner and bonded in the sum of $3000. conditioned for the faithful performance of his duties, neglected his duties following the death of Olga Gallagher, and sullied his office as follows:

(a) He failed to take any disciplinary measures when he knew that defendant Taylor, his own appointee as medical examiner for North Haven, had failed to examine the body of Olga Gallagher prior to releasing it to the funeral director for preparation as required by Statutes 6-55 & 6-56; and thus he aided and abetted the destruction of very important evidence by condoning premature embalming.

(b) He failed to initiate any disciplinary measures or call for the prosecution of defendants Gallagher,

the two Bernieres and Rousseau for their deliberate violation of Statute 6-55 with penalties imposed by Statute 6-76.

(c) When first notified of the death he neglected to note the very suspicious fact that Olga had no doctor to attend her for severe hemorrhaging which apparently caused her death at an untimely age, and that her own doctor refused to sign the death certificate when called upon to do so before defendant Gallagher notified the police. A bloody blanket in the hands of police aroused no suspicion in his mind.

(d) He made no move for an autopsy until the plaintiffs demanded one and reported their suspicion of foul play, nor did defendant Taylor request one.

(e) When the autopsy revealed the cause of death to be a 4 inch skull fracture below and behind the left ear and that the impact of the blow causing it was most likely directly over the fracture itself, it was for the first time painfully evident that violence had been the cause of her death and nothing short of a searching inquest could possibly determine the circumstances under which the mortal injury had been sustained. Yet defendant Corrigan neglected his duty and neglected the opinion of his deputy Sachs, who by December 7, 1961 was certain Olga had been murdered by defendant Gallagher whose conduct for two years towards Olga had indicated a psychopathic condition in him reaching clear back to his early married life in or near Bristol, Connecticut, where he was quite generally recognized as the weapons expert of a very active and very dangerous mob of gangsters, and where the newspapers provide a far better record of Gallagher's criminal behavior than police or state's attorney's records.

(f) He failed in his duty under Statute 6-57 to make all proper inquiry respecting the cause and manner of death and thereby became subject to the penalties set forth in Statute 6--76.

(g) He failed to use the extensive power conferred upon him by Statute 6-70 to obtain evidence and to cause the arrest and commitment to jail of murder suspects.

(h) When the plaintiffs found he was entertaining some erroneous evidence with which to exonerate defen-

dant Gallagher, and sought to explore it further with him, he turned upon the mother of Olga and threatened to arrest her if she did not get out of his office immediately, and he actually pushed her bodily out of his office by use of physical force which constituted assault and battery, when his sworn duty called for diligent search for the truth, for which he demonstrated he had no use.

(i) Nor would he acknowledge, answer or explore material facts pointing to murder by defendant Gallagher contained in 3 letters which the plaintiffs wrote and brought to his attention, one through the medium of Dr. W. Robert Adams of Yale University who conducted the autopsy.

(j) His aforesaid behavior and his failure to reply to plaintiff's letter of February 1, 1966, the last one of a series, or to offer any reasonable explanation of his conduct, marks defendant Corrigan as the focus for the obstruction of justice in this case and the king-pin of the conspiracy, whose neglect and misfeasance in office is evidence of his yielding to the enormous power wielded by those conspirators whose names are unknown, but whose wishes are faithfully observed by all of the defendants.

17. In pursuance of said conspiracy, defendant Arthur T. Gorman, recently resigned State's Attorney, turned a deaf ear when the mother plaintiff sought his help in person upon two occasions at his official office; and when the sister plaintiff communicated with him by letter at his personal law office, he never showed his face or answered a word. His official secretary would not permit him to be seen or consulted; she assigned erroneous causes for Olga's death and professed superior knowledge honeycombed with inaccuracies typical of carelessness and superficiality, devoid of the thoroughness and serious consideration a murder case deserves and requires, and quite generally treated the whole matter as a joke. Four letters were sent him by plaintiff Cravens between the dates of July 11 and October 3, 1962 aggregating upwards of 11 pages of facts bearing upon the assault and murder angles and

asking for action by him as State's Attorney. No reply was ever received, no investigation initiated, no questions ever asked or interest evinced up to February 15, 1965, the date of his resignation from office.

18. In pursuance of said conspiracy, defendant George R. Tiernan who succeeded to the office of State's Attorney after defendant Gorman's resignation, has, since March 1, 1966 blocked a thoroughgoing investigation into the death of Olga Gallagher by the State Police, considered important by an officer at the Bethany Barracks and by another official at the headquarters in Hartford. Neither investigation could be launched without the permission of defendant Tiernan. The Hartford interest in the case had progressed far enough for a State Police car from Hartford with 2 officials to be dispatched to Ansonia on March 22, 1966 on some phase of the inquiry. The Bethany inquiry on November 22, 1965 sought Tiernan's permission to pick up and pursue the investigation, and was told he would consult defendant Corrigan. Since that both inquiries have come to a sudden stop with peremptory and conclusive overtones. This very recent double blockage by defendant Tiernan, together with his neglect of duty to take any action requested by all 3 plaintiffs in their letter to him of March 5, 1966 in which was reviewed all the material supplied to defendant Gorman, with more added, reveals Tiernan as a key obstruction in the civil conspiracy.

19. In pursuance of said conspiracy, defendant Herman Levine conspired with the probate judge who had appointed him administrator of the estate of Olga Gallagher, to permit an unwarranted delay of over 4 months in the publication of the solvent notice and knowingly to permit the statute of limitations to expire against the right of the estate to recover damages from defendant Gallagher for the serious injuries sustained by deceased from his vicious psychopathic assault upon her skull on July 26, 1961. He aided defendants Gallagher and DeAndrade to obtain an illegal non-suit of plaintiffs' efforts in Superior Court seeking under-

ground burial for the deceased; and conspired with them to set up two false and fraudulent special defenses on January 11, 1966 in an appeal from probate to Superior Court, case No.108,027, which he admitted in writing on April 28, 1966 was done with his knowledge and consent; and in August and September 1965 he conspired with them and defendant Horwitz in an attempt to defraud the plaintiffs out of $30. costs in Supreme Court Appeal No.5427; and indulged from time to time in other overt acts during his term as administrator of said estate.

20. In pursuance of said conspiracy, defendants King, Murphy, Alcorn, House and Ryan, sitting on the State Supreme bench, listened to a string of falsehoods related to them in open court by defendant DeAndrade and knowingly used them to fabricate a false charge against the plaintiffs of failing to use due diligence in prosecution of their appeal, which they knew was not true and was useless to support a dismissal, but they used it anyway and clearly acted without jurisdiction to dismiss the appeal on June 7, 1966. The real reason for dismissal was to keep out of the record and to shut off the damaging evidence contained in Olga's 4 letters that defendant Gallagher is a very dangerous gangster with a sociopathic personality disturbance who had threatened her life countless times with his firearms, so that she was in grave danger every moment she lived with him in the same house. The draft findings on a supplementary appeal revealed these facts and were sufficient to win the case in a walkaway. This is the second time the High Court had done the same thing. A previous appeal was dismissed on December 3, 1963 also without jurisdiction and for failure to use due diligence, also falsely charged, for only the day before, Dec. 2nd. the plaintiffs had filed a supplementary appeal under Practice Book Sec.639 and another appeal on Nov. 7th in which the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretences. These 5 defendants and 3 other Justices sitting in 1963 have shown a preference to violate Canon 11 of Judicial

Ethics and vent their wrath on those who report to them instances of corruption and misconduct. The offenders go scot free. Defendants King and Murphy know there was something very wrong about their dismissal of the first appeal in December 1963, for they issued secret orders to clerk Horwitz that judgment was not to be entered in that appeal and it had not been entered up to February 18, 1966, when the time had long since passed for any entry of judgment in that case No.5427. Two instances of illegal dismissal without jurisdiction and on false charges, shattering constitutional rights to due process and equal protection, are quite enough to demonstrate the state courts all the way up are determined no justice shall be administered in what most insiders know is a murder case by a gangster with unlimited protection who has defied Olga's constitutional rights to that kind of burial her freedom of religion requires.

21. In pursuance of said conspiracy, defendant Doherty, acting as a Superior Court Judge at a hearing on March 11, 1966, admittedly acted without jurisdiction in denying a coram nobis petition of the plaintiffs and sending it up to the Supreme Court which he could not help knowing had not the slightest jurisdiction over it at that time. His only purpose was to get them into a procedural jam which would handicap them in the action for underground burial. His next move was to throw out a very effective pleading of the plaintiffs, again acting without jurisdiction and quite fraudulently and so rudely that it amounted to intimidation from which it took the plaintiffs several weeks to recover. He refused to hear either oral or written argument from them and forbade the daughter ever again to act as the mouthpiece for her parents. This complete black-out of justice occurred on April 15, 1966 and had a two-fold purpose. It served to protect defendants DeAndrade and Horwitz from an exposure of their attempt to defraud the plaintiffs out of $30. and it made it to appear the plaintiffs were in default, when they were far from it. Then he entered into conspiracy with Judge Parskey to dismiss the whole appeal from probate, for that was

defendant DeAndrade's greatest anxiety because the reasons of appeal opened up the way to presentation of much available murder evidence which all of the conspirators sought to hide. At a hearing on April 29 and again on May 6, 1966 Judge Parskey denied the plaintiffs, who appeared pro se by necessity and not from choice, numerous rights universally accorded litigants and twice refused their entreaties to present their oral argument in writing with memo of law showing the impossibility in this state of dismissing an appeal from probate for failure to plead. He refused even to accept the legal memo they handed to him, and on May 3rd, with no power to do so, dismissed their appeal from probate. The transcripts of these hearings demonstrate that the conspiracy to defraud and defeat the plaintiffs was now right out in the open with no mercy or justice available in state courts on either the burial or the murder angles.

22. By reason of the premises aforesaid the plaintiffs have suffered intense pain, anguish and distress of mind and body, have been under extreme nervous tension without any surcease for well over 5 years, and many times have been at the point of desperation at the imminence of possible cremation and how to find and pay for counsel to defend their deceased daughter's Federal Constitutional right to underground burial as required by her religious training and belief. This unprecedented period of uninterrupted physical and nervous strain over the abuse and mistreatment of a dead body has resulted in damage to the plaintiffs of:

(a) $4000. for legal expense; $6000. investigative expense; $3000. for travel expense in attendance at over 40 hearings; $3000. travel in and out of state to find or consult counsel; $1000. travel in 3 states on investigative work; $2000. cost of preparation of motions, petitions and other papers, and of a vast correspondence with officials and lawyers.

(b) $3500. for hospital and medical expense.

(c) $330,000. for pain and suffering of mind and body.

(d) $660,000. for exemplary and punitive damages.

(e) $25,000. for counsel fees.

WHEREFORE, plaintiffs pray:

1. For judgment against the defendants for the sum of $1,037,500., plus costs of the suit and interest.

2. The immediate issuance of a preliminary injunction restraining the defendant Gallagher from cremation of the body of Olga Gallagher as long as he continues to be the legal custodian thereof, and from claiming that or any other privilege or benefit from a judgment of dismissal rendered on June 7, 1966 by the Supreme Court of Errors in Appeal #5894, which was obtained by the exercise of extrinsic fraud and rendered void thereby; and from pleading said judgment as res adjudicata or collateral estoppel, until the matters herein are fully heard and determined, or until the further order of the Court in the premises.

3. The issuance of a final injunction permanently restraining said Gallagher from commission of any of the acts set forth in the preceding paragraph; from attempting to coerce the plaintiffs into payment of any part of the funeral or burial costs, or any part of the monument or perpetual care costs, as a price for respecting the religious training and belief of the deceased and of her next of kin and their Federal Constitutional rights to the free exercise of same; and from delaying the underground burial of said remains in an Ansonia cemetery longer than ten days after action of this Court in granting a final injunction, or other relief.

4. Such other and further relief as to the Court seems proper.

TRIAL BY JURY OF ALL ISSUES HEREIN IS DEMANDED BY THE PLAINTIFFS.

Loring J. Whiteside
Loring J.Whiteside,Att'y. for plaintiffs
South Pease Road,Woodbridge,Conn.06525
Phone 387-3358

STATE OF CONNECTICUT:
: SS. Ansonia
COUNTY OF NEW HAVEN :

Sampson and Evelyn Tkaczyk and Julia Cravens of Ansonia, Connecticut, being duly sworn, depose and say that they are the plaintiffs in the foregoing complaint, that they have read pages 2 to 11 of said complaint and Amendment pages 1, 1-B and 12, including EXHIBITS "X" & "Y" which are annexed thereto and know the contents thereof; and that the matters set forth therein are true to their own knowledge.

Sampson Tkaczyk
Sampson Tkaczyk

Evelyn Tkaczyk
Evelyn Tkaczyk

Julia Cravens
Julia Cravens

Subscribed and sworn to before me
this 24th day of August, 1966.

Loring J. Whiteside
Notary Public
My commission expires April 1, 1969.

(N.S.)

UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT
In re LORING J. WHITESIDE CIVIL NO. 11,798

ANSWER & COUNTERCLAIM TO CHARGES IN ORDER TO SHOW CAUSE

June 12, 1967

The respondent's answer, defenses and counterclaim to the charges set forth in the order to show cause are as follows:

1. Admits the allegations of paragraph (1).
2. Denies the allegations of paragraphs (2)&(3).
3. As to the allegations of paragraph (4) respondent points out that he made no allegations of criminal conduct on the part of any justices or judges in any part of said complaint; it was Chief Judge Timbers himself in par. (2) of the order to show cause who first made that allegation. Six paragraphs of said complaint, 2-A, 2-B, 3, 11, 20 & 21, recite numerous wrongful and fraudulent overt acts of various state judges, named and unnamed, but it is clearly and unmistakeably stated in par. 2-B that the action was "brought for damages suffered by the plaintiffs as a result of a civil conspiracy among the defendants, which completely negatives any idea of intention to ascribe criminal action to any judge. Whether the judicial overt acts described also have some criminal significance is a possibility never considered or intended by respondent, and is of such little consequence or importance in this proceeding, or in the main action No. 11551, that he has had no free time to examine the criminal statutes so as to verify Judge Timbers' allegation. He will be left to its proof, if he regards it important.

4. As to the allegations of par. (5); they are so vague and incomprehensible, and fail to point out what and how many statements about what and how many judges Chief Judge Timbers regards as charging criminal conduct, it is impossible for the respondent to frame a

responsive pleading. In an effort to overcome this glaring defect, and hoping for candor and fairness on the part of both Judges Timbers and Blumenfeld, a motion for a more definite statement was filed on May 4, 1967 under Rule 12 (e) of the Rules of Civil Procedure, which was bluntly denied in an evasive blast of sarcasm on May 17, indicative of venemous prejudice against any fair presentation or consideration of the issues. Respondent's only recourse at this stage of the proceedings is to deny, which is hereby done, that there was any inclusion in said complaint of any allegations of judicial criminality and denial of the slightest disrespect of judges and judicial offices and of any violation of Canons 1 and 32.

5. The 11 page MOTION TO QUASH, including the 38 page Apperdix attached thereto, filed herein on March 20, 1967; and the 5 page MOTION FOR SUMMARY JUDGMENT, including the 3 EXHIBITS "A", "B" & "C", mentioned therein and filed on April 3, 1967, with MOTION filed May 22, are all adopted by reference and made a part of this answer.

FIRST AFFIRMATIVE DEFENSE.- Constitutional right of respondent to freedom of speech.

1. All comments of whatsoever nature in all parts of Complaint No.11551 pertaining to state judges relate to "proceedings in cases already heard and decided, and not to matters then pending or on trial." Hence there was no current interference with the administration of justice is involved. No base or unworthy motives are involved, no intimidation, no indecent language, nothing but a respectful statement of overt acts. The respondent's FIRST AMENDMENT right to freedom of speech and publication of his sentiments on all subjects is paramount, and cannot be violated by disbarment or the slightest disciplinary action of this court. Re Hart, 104 Minn.88 (1908); 17 L.R.A.(N.S.) 585,591; State ex rel Atty.Gen. vs Circuit Court, 97 Wis. 1, 12; 72 N.W.193. Any attempt to interfere with that right only renders an adverse decision null and

void. The state judges have at their disposal ample remedies to rectify any misstatement in the complaint.

SECOND AFFIRMATIVE DEFENSE. Immunity of respondent from harassment.

1. Every word written or spoken by the respondent in said Complaint about judges was pronounced in the ordinary course of his duty to his clients, imposed upon him by CANONS 29 & 15 of Professional Ethics, which affords him complete immunity from the harassment of any such proceeding as this, and exempts him from past, present and future harassment, defamation and prosecution at the hands of this or any other court. This action should be instantly terminated with apologies. He did not exceed his duty in any particular. It was the seizure of the illegal jurisdiction by the 7 state judges which provided the bottle-neck effectively blocking the plaintiffs and rendered effective all of the misdeeds of the other defendants. It was the outstanding overt act in the entire case and happened twice, and under CANON 15 could not be omitted.

2. It is a positive rule of law which protects judges, counsel, witnesses and parties for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law, and has been so stated by the United States Supreme Court in Spalding vs. Vilas, 161 U.S. 483,497(1896). In view of such authority and such a rule of law, this court is clearly without jurisdiction of the subject matter or of the respondent, particularly where 7 of the state judges acted without jurisdiction and are subject under both Connecticut state law and Federal law to civil damage suits for injuries sustained by private litigants. (for case citations see par.4 of MOTION FOR SUMMARY JUDGMENT)

THIRD AFFIRMATIVE DEFENSE. Allegations about judges shockingly true but respectful.

1. Usurping jurisdiction which they could not help

knowing they did not possess by the 7 judges named as defendants completely wipes them out as subject matter in this proceeding. This is abundantly evident from the complaint. They are being sued as individuals and brought this plight upon themselves. Dismissal as to them is an absolute necessity. There is no legal or equitable escape for them.

2. Par. 20 of the Complaint speaks of a state "transcript disclosed a Superior Court Judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretences." This was shown to be true at the hearing before Judge Blumenfeld by documentary evidence consisting of the transcript itself marked EXHIBIT "B"; the state motion for cease and desist order against attorney DeAndrade under CANON 11 of Judicial Ethics (AP 4-6); the letter of Julia Cravens to Judge Coles (AP 7); plaintiffs' Appeal and Assignments of Error in state Appeal #5427 (AP 8-11). These and additional documents (AP 13-37) reveal that in all likelihood it was the seriousness of the charges against Judge Coles which triggered the determination of the then 5 Justices of the Supreme Court to seize jurisdiction they knew they did not possess to dismiss illegally the appeal #5427 and thus save Coles as well as various judges and lawyers who had been conspiring to defeat the constitutional rights of Appellants and keep the murder facts out of the public eye. This plethora of documentary evidence shows that the state courts were thoroughly conversant with everything the federal court is talking about. It is nothing new or unfair or disrespectful, but shockingly true and thoroughly documented.

FOURTH AFFIRMATIVE DEFENSE. Illegal seizure of jurisdiction by 7 state judges.

1. This defense is touched upon necessarily in the preceding defense, but is more extensively covered in Par.4 of the MOTION TO QUASH filed March 20 and also in Par. 4 of the MOTION FOR SUMMARY JUDGMENT filed May

22, to which reference is made and incorporated herein. This illegal usurpation of jurisdiction by the 7 judges is the only reason they were or could be named as defendants. Had they exercised a legitimate jurisdiction they would have complete immunity from suits of any kind by private litigants. As it is this court should have known they do not have the slightest vestige of jurisdiction to cite these 7 judges as victims of a breach of ethics. This court's total absence of authority in such cases is monumental.

FIFTH AFFIRMATIVE DEFENSE. This Court's lack of jurisdiction.

1. The preceding 4 affirmative defenses, each of itself, is adequate ground to establish lack of jurisdiction in this Court to initiate or maintain such a proceeding. The Constitution forbids it, the loss of immunity by the 7 state judges leaves nothing to be protected, and the complete immunity of the respondent from harassment renders it inane, when he is seeking to uphold "THE HONOR OF THE PROFESSION" as required by Canon 29 of Professional Ethics, by accepting "without hesitation employment against a member of the bar who has wronged his client." Likewise respondent was and is required by CANON 15 to give his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense." Under the masquerade of upholding CANONS 1 & 32, Chief Judge Timbers has illegally seized a jurisdiction over subject matter contained in Complaint 11551 which he cannot help knowing he does not possess in the effort to force or intimidate the respondent into a breach of CANONS 15 & 29.

And any judge who aids him in that effort is guilty of an abuse of discretion, overwhelmingly sufficient to vacate any adverse decision in this proceeding.

2. The reasoning and authorities cited in the following court opinions are conclusive as to the District Court's complete lack of jurisdiction over the subject matter in this proceeding. In Ex Parte McLeod (D.C.) 120 Fed.130,136 the court said:

"Such criticism (of a judge) is the right of the citizen and essential, not only to the proper administration of justice, but to the public tranquility and contentment. Withdrawing power from courts to summarily interfere with such exercise of the right of the press and freedom of speech, deprives them of no useful power. ** Every newspaper proprietor within the state, and every other citizen therein, in his capacity as such, might, therefore, as we hold, have written or published the letter of the accused to the governor, and the matter contained in the body of the letter to the chief justice and not be answerable for so doing, otherwise than in an action triable by a jury of his peers; and though one became an attorney, he still retains his rights as a citizen and a free man. 'Fidelity to the court', as was said in the Pennsylvania case above cited (Ex parte Steinman, 95 Pa.220) 'includes many particulars but they all evidently concern his official relations.' The attorney is bound to render the court the respect which is its 'due' under the law. This is the full extent of his obligation. Notwithstanding his oath, he may exercise his constitutional rights. No statute could have any validity which would undertake to impair or abridge them. He may sue a judge in his own behalf or for another, alleging every fact pertinent to the cause, and not thereby fail in his professional duty. Nor is he professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen. Austin's Case, 5 Rawle (Pa.) 205."

And in Re-Hart, 104 Minn.88 (1908), 17 L.R.A.(N.S.) 585,592, the Court said:

"Chief Justice Sherwood was not only a most eminent jurist, but was also in his day the very highest authority in all matters pertaining to professional ethics. 'No class in the community', said he in the Steinman case, 95 Pa.220, 'ought to be allowed freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of judges than members of the bar. They have the best opportunities of observing and forming a correct judgment. They are in constant attendance on the courts. ** To say that an attorney can only act or speak on this subject under liability to be called to account and to be deprived of his profession and livelihood, by the very judge or judges whom he may consider it his duty to attack and expose, is a position too monstrous to be entertained for a moment under our present system.' This language was not written because of any peculiar provision of the Pennsylvania Constitution. It is applicable everywhere; and we adopt as our conclusion here these words of Justice Brewer: 'After a case is disposed of, a court or judge has no power to compel the public, or any individual thereof, attorney or otherwise, to consider his rulings correct, his conduct proper or even his integrity free from stain.' Re Pryor, 18 Kan.72;76. **

We have yet to learn that the Federal courts or judges have failed to maintain the respect and confidence of the people because powerless since Act March 2, 1831 Chap 99, 4 Stat.at L.487, U.S.Comp. Stat.1901,p.583, to punish summarily those guilty of such utterances, not addressed to the judge in person. 'Respect to courts cannot be compelled. It is the voluntary tribute of the public to worth, virtue and intelligence, and whilst they are found upon the judgment seat, so long and no longer will they retain the public confidence.' Stuart vs. People, 4 Ill. 395, 405."

3. Jurisdiction of the subject matter is also lack-

ing because the CANONS OF ETHICS have never been adopted by the Federal District Court of Connecticut as a perforce statute and hence cannot be made the basis of any disbarment or disciplinary action, unless authorized by the common law for moral turpitude, fraud, dishonesty, deceit, betrayal, bad faith, excessive fees or malicious conduct, not the slightest hint of any of which is present in this proceeding. Par. 8 of the MOTION TO QUASH is made a part of this paragraph.

4. Jurisdiction is further lost in this proceeding by the denial on May 17 of respondent's motion for a more definite statement of the vague and ambiguous contents of paragraphs 2 and 5 of the Order to show cause which makes it impossible for respondent to know what and how many statements in the Complaint Judge Timbers thinks are criminal charges against judges. Not even to know what the charges are is a deprivation of due process of law and recognized as such all over the land . Such a denial is also a fitting measure of the bitter prejudice and bias in the minds of all the District Court judges in Connecticut.

5. The astounding and shameless announcement of Judge Blumenfeld on May 31 that "No more 'motions' will be ruled upon is the crowning blow. What the United States Supreme Court thinks of such behavior is well stated by Justice Black in Holt,et al. vs. Virginia, 381 U.S.131, 136-137 (1965):

"It is settled that due process and the 6th Amendment guarantee a defendant charged with contempt such as this "an opportunity to be heard in his defense,-a right to his day in court and to be represented by counsel. In re Oliver, 333 U.S.257,273. See also Gideon vs. Wainwright,372 U.S.335. The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. See Willner vs. Com.on Character & Fitness, 373 U.S.96,105. And since a fair trial in a fair tribunal is a basic requirement of due process, In re Murchison, 349 U.S. 133,136, itv necessarily follows that motions for

change of venue to escape a biased tribunal raise constitutional issues both relevant and essential. Cf. Irvin vs. Dowd, 366 U.S.717,722; Tumey vs. Ohio,372 U.S.510 ***** (p.139) "our conclusion is that these petitioners have been punished by Virginia for doing nothing more than exercising the constitutional right of an accused and his counsel in contempt cases such as this to defend against the charges made. REVERSED & REMANDED."

The above quotation and citation was spread out before Judge Blumenfeld on March 20, 1967 on page 10 of the MOTION TO QUASH. This is the supreme law of the land and yet Judge Blumenfeld deliberately disregards it as binding on him and proceeds as though he is a depository of arbitrary power in defiance of CANON 20 of Judicial Ethics. And by his RULING on the Motion to Quash wherein he disregarded or overlooked one of the outstanding facts and features of the Complaint and arguments of respondent as to the wrongful seizure of a jurisdiction they knew they did not possess by the 7 judges, Judge Blumenfeld failed to avoid the suspicion of arbitrary conclusion required of him by CANON 19. His fallacious reasoning with respect to need for library research to compose an answer and in denying a more definite statement, and his sarcasm in those two rulings on May 17 and another on May 31 about the summary judgment together with his threats and lawless denials, all of which openly appear upon the face of the record of this case, have disqualified him as an impartial judge to hear this case or pass upon it, and show that he has forgotten the injunction of CANON 33 requiring him to be "particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct." His absolute refusal to rule upon any more motions makes that the rule of his court and forbids a motion for his disqualification, change of venue, importation of a judge from outside of Connecticut, or even of dismissal for lack of jurisdiction, which is

the burden of this FIFTH DEFENSE, all of which in accordance with the rules and good practice should precede any hearing on the merits and should even precede the answer. The predicament in which a decent lawyer finds himself when confronted by a determined prejudiced judge who won't even obey the United States Supreme Court is fantastic and sort of humorous. Anyway from this moment on, the respondent protests against any further action by Judge Blumenfeld in this case on motions or anything else. And refuses to waive his constitutional rights to due process which will render null and void any adverse action in the past or in the future by Judge Blumenfeld, whose jurisdiction in this case is utterly and completely gone.

SIXTH AFFIRMATIVE DEFENSE. Absence of criminal charges vs. state judges.

1. Perhaps the biggest mistake made by Chief Judge Timbers in filing these charges against the respondent was his jumping to a conclusion, after reading the Complaint that the state judges were accused of criminality. Not once in the whole Complaint was the word "criminal" used to describe their behavior. The whole action is a civil one; so stated at the beginning as "CIVIL ACTION No. 11551." In the 12th line of Par. 2-B it is specifically stated to be a "civil conspiracy" among the defendants which did the damage. Only the overt acts of the judges are enumerated and clearly stated to be part of the CIVIL CONSPIRACY. That left Chief Judge Timbers out on a limb from the very beginning and should have been sufficient to warn him that he had no jurisdiction of the subject matter in this proceeding. To found a disbarment action upon a MISTAKE only serves to render a judge guilty of acting without jurisdiction, and knocks out his immunity for misconduct in so doing. Even if the same overt acts of the 7 judges may be susceptible of both civil and criminal interpretations, the one intended by the author governs, particularly when he tags it as "CIVIL" in the same document. Two cases speaking of a similar situation held that upon the respondent's dis-

avowal of the ulterior interpretation, proceedings against the respondent must at once be discontinued. In re Wooley, 11 Bush.(Ky.)(1875) 95, 109; Ex parte Biggs, 64 N.C.214(1870). Both Chief Judge Timbers and Judge Blumenfeld were duly apprised of their gross mistakes in Par.3 of the MOTION TO QUASH on March 20,1967 and have had nearly 3 months in which to discontinue this proceeding or to come up with some authority to justify their mistake. Their failure to do so is indicative of major prejudice which compelled Judge Timbers to withdraw long ago as one of 4 judges scheduled to sit on this case, but what is more, it is indicative of a civil conspiracy between them deliberately to misconstrue respondent's writings and intentions and launch a malicious and false accusation against him by the seizure and usurpation of a jurisdiction they could not help knowing they did not possess. Par. 3 of said MOTION TO QUASH is made a part of this defense.

SEVENTH AFFIRMATIVE DEFENSE. Facts & events requiring summary judgment.

1. The 9 paragraphs of the May 22,1967 MOTION FOR RULING AS TO SUMMARY JUDGMENT are referred to and made a part of this defense, with special attention directed to Par.7 which bears out everything stated about the unnamed judge in Par. 20 of the Complaint, revealed by the U.S.Attorney in his MEMO to be former state Judge Albert L. Coles of Bridgeport. The only statement in the Complaint was that "the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury," etc. The transcript, EXHIBIT "B", certainly did disclose it.

EIGHTH AFFIRMATIVE DEFENSE. Various full defenses

1. The respondent is bound by CANON 29 to UPHOLD THE HONOR OF THE PROFESSION. He is bound to do that even if all the state and federal judges in Connecticut try to get him to do otherwise. Par. 2 of MOTION TO QUASH is made a part hereof.

2. No moral turpitude of the slightest degree is attributed to respondent herein. Par. 5 of the MOTION TO QUASH is made a part hereof.

3. Disbarment under the state of facts in this case cannot be done under the law as it has been the last century and a half in this country. See the NINTH AFFIRMATIVE DEFENSE following, and Par. 6 of MOTION TO QUASH is made a part hereof.

4. Already 3 judges of this court have voluntarily retired from serving as judges on this proceeding as a result of 2 affidavits filed March 15, 1967, which is striking evidence of how hard this Complaint has hit them in their business and social acquaintanceships and rendered it practically impossible for any of the 4 District Judges to observe CANON 33 requiring them to "avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct." Great credit is due Judge Zampano for his promptness in disqualifying himself as judge for this reason within 3 days after he first read the Complaint. It is high time for Judge Blumenfeld to follow suit. He has hung on far too long.

5. The complete collapse of all case authority relied upon to support or sustain this proceeding is set forth in Pars. 9, 10, 11, 12, 13 & 14 in MOTION TO QUASH and are made a part hereof. Par. 15 affords a sad picture of conditions in the highest state courts of Connecticut, notably set forth in part in the Complaint about concealment of what is regarded by many as a murder; and the contents of Pars. 16, 17, 18 and 19 are further illuminating sidelights on the civil misbehavior of all 22 defendants as well as others involved. The deeper you go, the worse it gets and the easier to understand and deplore. Pars. 15-19 are made a part hereof and make it clear why it is important that respondent insists upon obeying CANON 29 to UPHOLD THE HONOR OF THE PROFESSION.

NINTH AFFIRMATIVE ANSWER. What the best authorities say.

1. Quotation from RULING CASE LAW, vol.2, Par.184, p.1093, Lawyers' Pub.Co.

"Since it is usually held that the purpose of disbarment is not the punishment of the offender, but the elimination from the legal profession of persons unfit for membership therein, the instances in which a court may properly strike the name of an attorney from the rolls merely because of his acts or words involving a contempt for, or want of confidence in, such court or a member thereof must be comparatively rare. **** It is evident that criticism of a court cannot properly constitute ground for disbarment so long as it is bona fide and does not pass the limits of decency and propriety under the circumstances, and since the purpose of the rule against harsh and unjust criticism of judicial acts is to prevent the impairment of the administration of justice, such rule is usually applied with less strictness to past than to pending causes, and has even been held inapplicable to past decisions. **** And a mere libel upon a judge is not a cause of disbarment unless its object is shown to have been "the acquirement of an influence over a judge in the exercise of his judicial functions, by the instrumentality of popular prejudices."

Note- Numerous case citations accompany the above text.

* * * * * * * * * * * * * *

The respondent demands a trial by jury of all issues of fact in the main proceeding as well as in the Counter-claim to follow.

BY WAY OF COUNTERCLAIM vs JUDGES TIMBERS & BLUMENFELD

1. The allegations in the 5 paragraphs of the answer and in the 9 affirmative defenses aforesaid are made a part hereof.

2. Under Rule 13 (a) of the Rules of Civil Procedure this counterclaim is filed arising out of the transaction or occurrence that is the subject matter of the opposing party's claim and alleges as a FIRST COUNT a conspiracy between the two defendants to seize a jurisdiction they could not help knowing they did not possess, and initiated Disciplinary Action No.11,798 against respondent when they knew the charges were false and intended to pervert justice in order to protect their friends and social and business associates from such ignominy as they had earned by civil misbehavior in state courts, caring nothing about justice for the respondent or his clients or the duty he owed them to do exactly as he did. This action arises under Secs. 1343 and 1345 of the U.S.Code, under the common law and claims damages to the reputation and professional standing of the respondent and for his time and disbursements in defending a fraudulent charge as set forth in the preceding pages of the above answer and defenses.

WHEREFORE, respondent claims damages in the amount of $35,000. including exemplary damages, but nothing for pain and suffering, because he rather enjoyed observing the behavior of presumably highly intelligent persons behave so outrageously when all of a sudden the civil misbehavior of their friends was brought to light by Complaint 11551.

WHEREFORE, Respondent demands prompt dismissal of all charges against him in Order to show cause, and an early trial of the charges in said counterclaim.

June 12, 1967

Loring J. Whiteside
Respondent pro se
South Pease Road
Woodbridge, Conn. 06525

EXCERPTS FROM 13 PAGE TRANSCRIPT OF HEARING JUNE 20, 1967 BEFORE JUDGE BLUMENFELD

(Page 4) COURT: ** You don't deny that that is what your complaint stated, do you?

WHITESIDE: If your Honor please, I simply stand on the defenses as stated there, and I have nothing to add whatsoever.

COURT: Well, you go on to say in this defense that this was shown to be true at the hearing before Judge Blumenfeld by documentary evidence consisting of the transcript marked Exhibit B. Is there any other evidence of that that you wish to offer at this time?

W.: Your Honor, I am here simply as an observer this morning and not as a participant, and I have nothing to add whatsoever to the answer and defenses and counterclaim and the two motions filed yesterday morning. These are before the Court and that is all I have to say with respect to any of them. *** (p.5) they are self-explanatory and need no further explanation from me so far as I know at all.

C.: Well, I am giving you an opportunity, Mr. Whiteside, to present any evidence that you have to support the allegations that you made in your complaint which accused the judges of the state court of certain conduct and which statements are the basis for this proceeding. Do you have any evidence that you want to offer?

W.: If your Honor please, I have nothing to offer of any kind whatsoever, except what has been offered already to this Court and in this record.

C.: Now, Mr. Whiteside, in the event that the Court determines that disciplinary action should be taken, do you want to make any statement with reference to the measure of the action that the Court should order?

W.: If your Honor please, I have nothing to say whatsoever about what the Court does or desires to do, and it is quite evident in the answer that I protest the Court proceeding at all in this matter because of disqualification.*

(p.11) COURT: Is that true, Mr. Whiteside, what Mr. Newman said?

W.: It seems to me that the documents that were filed here in connection with this Quash motion, which were quite considerable, answered that. The purpose of filing those was to answer that question, that problem, and it shows that there were numerous letters back and forth between the family and the Court, the judges, and so on, which I hadn't mentioned at all to Mr. Newman in the conversation, because he didn't ask that question. ******

(p.12) COURT: That is true, isn't it, Mr. Whiteside, or do you have some evidence that you wish to offer now?

W.: If your Honor please, I have nothing to add today to what has been presented before, nothing whatsoever, and I only refer to anything before in answer to these questions you were directing at me, not because I wish to present any evidence whatsoever today.

C.: What is the answer to the question I present to you, regardless of whether you want to present that evidence or not: Did you at the time you made that allegation in Paragraph 20 have any evidence other than what appeared on the court record in the State of Connecticut of the conduct of Judge Coles?

W.: The only evidence that I have on those things has already been presented to this Court, and I can only refer the Court to what is shown in the records of this Court.

C.: Anything further? (No response) You have indicated pretty clearly, Mr. Whiteside, that you propose to appeal from any action which this Court may take in these proceedings and, therefore, I think in order to complete the final step at this level of the proceedings I will file a short memorandum containing my decision in this case. We will now recess until two o'clock. What was that, Mr. Whiteside?

W.: I was just asking if our case is ended.

C.: The case involving Loring J. Whiteside is ended.**,

W.: Thank you, your Honor. END.

EXCERPTS FROM EXHIBIT A

29 PAGE TRANSCRIPT OF HEARING ON MARCH 22, 1963 BEFORE JUDGE JOHN C. FITZGERALD

(Page 5) MR. DE ANDRADE: Has your Honor read this affidavit?
THE COURT: No, I haven't.
(Page 6) DE ANDRADE: It is the large one wrapped in blue there, I believe. ***
COURT: This is a motion to set aside non-suit. You don't mean that, do you?
DE ANDRADE: Yes, I do, your Honor. There is a 48 page affidavit connected to that. Your Honor can pick any page he wants and read excerpts.
(Page 14) COURT: I have just urged counsel of Mr. Gallagher to communicate with him and see if there can be reinstated --
DE ANDRADE: I think, if I might interrupt, I think that he would take my recommendation to still give custody to the parents on the initial agreement, if made that they pay the funeral expenses, and one further condition (page 15) that I pointed out earlier to your Honor, that these three people publicly, and on the record of this court and in this file, so state that all of these allegations and claims are false and untrue and were made solely in the heat of this lawsuit.
COURT: Well, you did say that he struck his wife on a certain date. ***
DE ANDRAGE: Otherwise, if your Honor please, I could not, in all justice, recommend to Mr. Gallagher to settle this matter, because these people and my acquaintance with them in this matter, it would be disastrous for Mr. Gallagher. This would be taken as an admission of every single thing that has been said.
COURT: You want to discuss with your parents whether or not - this affidavit is here in the file, ***
DE ANDRADE: There are others as well, your Honor, other papers in this pleadings, in this matter, that contain - some of which contain the same things. In addition there are motions, I think, that the Court

should be cognizant of, that direct allegations as to the honesty and propriety of this Court. I think those should be publicly retracted as well, and these are -- *****

(Page 16) COURT: *** The body of your sister will be released and your parents and yourself will bury the body in such manner as you people see fit, if the parents pay the funeral expenses. Secondly, lawyer for your sister said that Mr. Gallagher, however, will not acquiesce in that form of compromise, unless some written statement is made withdrawing the accusations against him, as appear in this affidavit. You want to consider that with your parents, whether they are willing to have noted on a piece of paper that the matters recited in their affidavit of January 21, 1963, insofar as such relate to the conduct of the said Kenneth Gallagher, are withdrawn? Would you be satisfied with the expression "Withdrawn"?

DE ANDRADE: No, your Honor, I would not.

* * * * * * * * * * * * * *

EXCERPTS FROM EXHIBIT B

14 PAGE TRANSCRIPT OF HEARING ON OCTOBER 25, 1963 BEFORE STATE JUDGE ALBERT L. COLES

(Page 10) THE COURT: Now let's see. You had an order to cease and desist. Now, what was that?

MRS. CRAVENS: The argument in support of this motion is for the distinct purpose of bringing to your attention unprofessional and criminal conduct of Attorney DeAndrade, which then makes it obligatory upon this Court to take corrective action, first by adverse (Page 11) comment, and if that proves ineffective, then, by sending the matter at once to the proper investigating and disciplinary authorities as is specifically stated in Canon 11 of the Judicial Ethics which, no doubt, your Honor is familiar.

THE COURT: Is he committing any criminal act right now?

CRAVENS: He is not in this courtroom at the present time.

COURT: Beg pardon.

CRAVENS: Under the presence of Judge FitzGerald, which is -- --

COURT: Madam, you are on dangerous ground. I can't and won't permit statements which are made particularly when the questioner charges any person, you or me or anyone else, with criminal acts made on the record here, without severe and difficult results, if they are not proved, and I asked you before you embarked upon this motion for an order against any person to cease and desist from criminal acts, you tell me what the criminal acts are which he is now committing, and if you do so, you will be held responsible for proving them.

CRAVENS: Well, these are the acts he has already committed, your Honor.

COURT: Well, you take an issue with those. We will make no order at this time concerning any act or any conduct of any person who is in any way connected with (Page 12) your claims in that appeal. It is improper to. You wouldn't want me to make one against you and I won't make one against anyone else. We are all in-

volved on your allegations and statements and pleadings in this matter, which is returnable to the Superior Court in the original file, which is now on appeal. I say to you the thing will remain just as it is. We will take no action which will affect the persons, you or your parents or any attorney involved or any defendant involved who are concerned, in any way, in that action. I won't do it because it will be unfair and unjust and improper to interfere in that proceeding in any way. Now, I suggest again that having examined this last motion that it is a proceeding which reviews what you claim are the wrongs that are done to you and your family and your sister's estate and your sister, by individuals and I will deny that motion or for an order, and I suggest to you, most sincerely, don't make any more motions of that type. You wouldn't want to have on the record here written statements about you or your parents guilty of any crime.

CRAVENS: These are things that actually happened.

COURT: I know you say they have and repeated it and repeated it and repeated it and I caution you not to repeat it any more because you are close to getting yourself into trouble making statements like this, your statements or your accusations made time and time and time (Page 13) again. Now it is time to stop. I told you that the appeal is pending. You have a perfect right to file your brief. Devote your time and attention to doing that and you will do yourself and your parents and the memory of your sister a great deal more justice than you will by repeating and charging these other people with the commission of all sorts of crime.

CRAVENS: May I say that -- --

COURT: They will get their due when this appeal is heard.

CRAVENS: May I ask your Honor why it is impossible for my parents and us to just get any justice? Why is it impossible?

COURT: Well, I am not prepared -- --

CRAVENS: Whatever we do is wrong.

COURT: -- -- to answer questions of that type, Madam. I am prepared, and perhaps I shouldn't, to try to ad-

vise you, and other courts have done so, to their regret, I know. What you should be doing, instead of preparing this sort of memo -- --

CRAVENS: We have had two years of -- --

COURT: After I have reviewed this, I may very well expunge it, ask that it be impounded and put under lock and key because you have said things no one should say about other people in a matter of this sort. You are saying why they can't get justice. I'll answer it. And the only answer I can make is this: by examining (Page 14) this file, you have had more than ample opportunity to get justice. You don't agree with the disposition but justice certainly has been done here. That is my view of it and I know it isn't yours but you ask and that is my answer to it. I will deny both of those motions. I will certainly not issue any order for equitable relief nor will I issue any order to cease and desist for the reasons which I have already stated voluminously on the record. That is it.

We will recess until Tuesday at 10 o'clock.

(Court Adjourned)

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No. 1245

In the Supreme Court of the United States

OCTOBER TERM, 1967

IN RE LORING J. WHITESIDE, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM IN OPPOSITION

Petitioner was graduated from the Harvard Law School in 1911 and was admitted to the New York bar in 1913 (Pet. App. 2, p. A–15). He practiced law in New York until 1921, when he moved to Connecticut. He did not become a member of the Connecticut bar but, in 1964, was admitted to the bar of the United States District Court for the District of Connecticut (Pet. App. 2, p. A–15, A–16).

During several years of litigation in the Connecticut courts,[1] the plaintiffs in the case of *Tkaczyk* v. *Gallagher*, 259 F. Supp. 584 (D. Conn.), had been informally advised by petitioner on how to proceed in their actions to require the husband of their deceased daughter to bury her remains instead of cremating them,

[1] See, *e.g.*, 151 Conn. 728, 732, 733, 734; 153 Conn. 733, 740 744.

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and to establish the husband as the murderer of the deceased.

Following the unsuccessful termination of the state court litigation, petitioner, as counsel, filed the complaint in the action of *Tkaczyk* v. *Gallagher, et al.* in the District Court for the District of Connecticut (Pet. App. 2, p. A–22). That complaint named seven Connecticut judges, including all five members of the Supreme Court of Errors, as defendants, and alleged, *inter alia,* that each of those judges and several unnamed judges had been involved in a conspiracy against plaintiffs. Thus the complaint charged that "the * * * defendants [including the judges] conspired and agreed together, each in his own particular field and time for action, * * * to defraud and deceive the plaintiffs and to conceal and suppress the true cause of * * * the * * * death of * * * Olga Gallagher" (Pet. App. 2, p. A–24). It also alleged that certain Superior Court judges, certain State Supreme Court justices and one probate judge "entered into the conspiracy to conceal the murder and perform overt acts of their own * * *" (Pet. App. 2, p. A–28). In pursuance of the "conspiracy", the members of the State Supreme Court of Errors were asserted to have "listened to a string of falsehoods related to them in open court", and "knowingly used them to fabricate a false charge against the plaintiffs of failing to use due diligence in prosecution of their appeal, which they knew was not true * * *" (Pet. App. 2, p. A–35). The complaint also charged that a "transcript disclosed a Superior Court judge aiding and abetting [another defendant] in attempted subornation of perjury and an

attempt to extort a ransom under false pretenses" (Pet. App. 2, p. A–35).

The district court dismissed the action, holding that, in the circumstances, the complaint failed to present a substantial federal question. *Tkaczyk* v. *Gallagher*, 259 F. Supp. 584 (D. Conn.). An appeal from that decision was dismissed from the bench one week later by the Court of Appeals for the Second Circuit.[2] *Ibid.* The order of dismissal by the district court directed the United States Attorney to conduct an investigation to determine whether there had been a breach of professional conduct by petitioner such as to warrant disciplinary action. *Id.* at 587.

The United States Attorney conducted an investigation, including an interview with petitioner, and submitted a report to the court (Pet. App. 2, p. A–14 *et seq.*). That report noted that the complaint filed by petitioner had gone far beyond the claim that the state judicial action was erroneous, and had specifically accused state judges of criminal conduct (Pet. App. 2, p. A–18). Petitioner had advised the United States Attorney that he had no evidence upon which to base his allegations other than the public record of the state court case brought by his clients. *Ibid.* The allegation as to Superior Court Judge Coles' aiding and abetting attempted subornation of perjury and attempting to extort a ransom under false pretenses was based upon the transcript of a hearing before that judge on October 25, 1963. At that time,

[2] A later attempt to amend the pleadings by making them more specific was denied. *Tkaczyk* v. *Gallagher*, 265 F. Supp. 791 (D. Conn.).

Mr. and Mrs. Tkaczyk had filed a motion *pro se* seeking to have the attorney for their daughter's husband enjoined from taking certain action in connection with the primary litigation, which was then on appeal, and also disciplined for certain alleged unprofessional conduct. The allegations against the attorney were based upon an earlier offer of settlement, through the attorney, in which the husband offered to agree to an underground burial of the daughter's body if the Tkaczyks would pay the burial expense and state on the record that their extensive claims and allegations were untrue. Judge Coles denied the relief sought solely on the ground that it would be improper to take any action with respect to matters which were the subject of a pending appeal to the State Supreme Court of Errors.[3] Petitioner explained that the "attempt to extort a ransom" referred to the settlement proposal calling for the payment of burial expenses, and that the "attempted subornation of perjury" referred to the settlement proposal calling for the recantation of previous allegations. Judge Coles' action in denying the motion was the action referred to as "aiding and abetting DeAndrade in attempting subornation of perjury and an attempt to extort a ransom" (Pet. App. 2, p. A–19).

After receiving the report from the United States Attorney, the district court issued an order to petitioner to show cause why disciplinary action should not be taken against him (Pet. App. 2, p. A–12).

[3] The relevant portions of that transcript are reproduced at Pet. App. 2, pp. A–58, A–60.

Petitioner answered (Pet. App. 2, p. A–40), repeating certain of his allegations against the state court judges (*e.g.*, Pet. App. 2, p. A–43), and attempting to file a counterclaim (Pet. App. 2, p. A–52) against District Judges Timbers and Blumenfeld based on:

> [A] conspiracy between the two defendants to seize a jurisdiction they could not help knowing they did not possess, [in initiating] Disciplinary Action No. 11,798 against respondent when they knew the charges were false and intended to pervert justice in order to protect their friends and social and business associates from such ignominy as they had earned by civil misbehavior in state courts, caring nothing about justice for the respondent or his clients * * * [Pet. App. 2, p. A–53].

Petitioner sought damages on his "counterclaim"[4] of $35,000,

> but nothing for pain and suffering, because he rather enjoyed observing the behavior of presumably highly intelligent persons behave so outrageously when all of a sudden the civil misbehavior of their friends was brought to light by Complaint 11551 [Pet. App. 2, p. A–53].

At the hearing on the disciplinary proceeding, petitioner was given an opportunity to present any evidence he might have as to the charges he had made, but declined to do so (Pet. App. 2, pp. A–54, A–55).

The district court, noting that petitioner had offered

[4] Apparently, it was the refusal of the district court to hear his "counterclaim" and similar "motions" which gave rise to petitioner's allegations about refusal to apply the Federal Rules of Civil Procedure (Pet. 22–24).

no evidence other than the public record for making his accusations, and that the public record did not at all support the allegations, ordered petitioner disbarred (Pet. App. 2, pp. A–8, A–10). In the course of his appeal to the Second Circuit, petitioner repeated his allegations about the state court judges (*e.g.*, Pet. App. 2, pp. 4–6) and made additional charges of "criminal misbehavior" and "perjury" with respect to District Judge Blumenfeld (Pet. App. 2, pp. 8–10). The court of appeals affirmed, 386 F. 2d 805 (Pet. App. AP–1), holding that the district court was justified in finding that "these grossly disrespectful allegations, repeatedly made, were so totally unfounded and so clearly in violation of the Canons of Professional Ethics as to justify disbarment." 386 F. 2d at 806 (Pet. App. AP–2). It noted, however, that it would not object if the district court considered it appropriate to modify its judgment and suspend petitioner rather than disbar him. *Ibid.*

In his petition to this Court, petitioner again repeats his charges against the state court judges (*e.g.*, Pet. 7, 8, 12, 18–19), and also charges that Chief Judge Timbers of the District Court for the District of Connecticut

> has given every indication of becoming a conspirator with the 8 State Judges to continue the conspiracy of concealment of the murder facts and of the evasion of the constitutional rights to immediate underground burial [Pet. 8].

In addition, petitioner makes allegations of "perjury", and "corruption" (Pet. 13), apparently with respect

both to state and federal courts, without citing any evidence to support those charges.

Petitioner has not been deprived of rights guaranteed by the Constitution. As the court of appeals noted, the grossly disrespectful allegations, repeatedly made by petitioner, were so totally unfounded and so clearly in violation of the Canons of Ethics as to justify disbarment. And as that court also pointed out, "it is clear that in addition his conduct in presenting these wholly unsupported charges is such as to put in doubt his ability to exercise the judgment which advocacy requires." 386 F. 2d at 806 (Pet. App. AP–2).

This is an unhappy situation. Petitioner is a venerable lawyer. The suggestion of the court of appeals that suspension rather than disbarment would be appropriate seems to have merit. It is clear, however, that the courts below were warranted in the actions they have taken, and there is no basis for further review by this Court.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968

SUPREME COURT, U. S.

FILED

JUN 13 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE,
Petitioner

PETITION FOR REHEARING

LORING J. WHITESIDE
Petitioner, pro se.
South Pease Road, Woodbridge,
New Haven, Connecticut 06525

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

Now comes Loring J. Whiteside, petitioner in No.1245, and respectfully prays the Court to grant a rehearing on 3 separate grounds contained in the numbered paragraphs embodied in an affirmation as follows:

STATE OF CONNECTICUT:
: SS. New Haven, June 11,1968
COUNTY OF NEW HAVEN :

The petitioner, Loring J. Whiteside of Woodbridge Connecticut, affirms before a notary and represents to this Court that having been emboldened by 5 years of close observation of fraud and chicanery and shocking illegalities on the part of Connecticut State Judges and Justices, in which State processes to enforce his 3 clients' constitutional rights under the 1st & 14th Amendments to underground burial of their married daughter's dead body, were utterly and completely exhausted, on August 5, 1966 filed Complaint No.11,551 (Appendix No.2, pp.A-22 to A-34) in the Federal District Court to enforce said constitutional rights and for damages for their protracted denial by the subterfuge of 22 defendants. In so doing petitioner acted in faithful adherence to the mandatory requirements of CANONS 15 & 29 of Professional Ethics; in compliance with the recommendation of Chief Judge Phillips of the Tenth Circuit in his capacity as official spokesman of the American Bar Association (Conduct of Judges & Lawyers,p. 153); and in pursuance of the admonition of Mr. Justice

Frankfurter in Bridges v. California, 314 U.S.252,289, where he said:

"Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. **** judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

2. One of the principal grounds upon which this rehearing petition is based is to give this Court an opportunity, as the highest Court in the land, to put an end, so far as it is concerned, to the lengthy and almost insurmountable problem of the American Bar Association in getting the judges of the nation, both State and Federal, to honor their own CANONS of Judicial Ethics. This is emphasized by Judge J.Warren Madden of the U.S.Court of Claims in Washington, D.C. in the March 1952 Annals of the American Academy, Vol.280, page 60 as quoted on page 14 of the Petition; and by Chief Judge Phillips of the U.S.Court of Appeals in his book on Conduct of Judges & Lawyers at page 151 where he says "The survey shows the imperative need for improvement in the matter of judicial conduct."(Petition p.15). This same subject "Discipline of Judges", is treated by George E.Brand, former President of the Detroit Bar Association, of the State Bar of Michigan & of the American Judicature Society, in a 1960 article in Vol.46, p.1315 of the American Bar Association Journal, where he says:

"Much of the criticism of courts and judges could be met if the constitutional powers of supervision of their work were more effectively exercised than they are at present. *** The consensus of the national conference is that the traditional methods of impeachment and legislative address should be retained, though they are inadequate and for most needs should be supplemented; that there is need for a less cumbersome method of discipline or removal of any judge whose conduct has subjected or is likely to subject the court to public censure or reproach, or is prejudicial to the administration of justice; that the most urgent need is methods to deal with judicial conduct not warranting or requiring removal."

And this year the Cromwell Library of the American Bar Foundation has in course of preparation a report on the results of a recent survey of judicial disability, fitness and removal for misconduct. It would be quite a boost of encouragement to the American Bar Association and its Foundation, if they could point to some concrete case or action of the highest Court in the land, demonstrating its whole hearted backing of the CANONS OF JUDICIAL ETHICS which have been so irreverently ignored by so vast a number of judges for a very long period of time.

3. There are 8 JUDICIAL CANONS important for observance in this case which have been viciously violated, trampled underfoot and dragged in the mud. Briefly they are as follows:

(2) Courts are to promote justice and thus to serve the public interest.

(3) It is the duty of all judges in the U.S. to support the federal constitution *** they should fearlessly observe and apply fundamental limitations and guaranties.

(4) He should avoid infractions of law ***

(5) A judge should be impartial *** & diligent in endeavoring to ascertain the facts.

(8) It is desirable, too, *** that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

(11) A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counselors (this includes all judges who are attorneys) brought to his attention; and if adverse comment is not a sufficient corrective should send the matter at once to the proper investigating and disciplinary authorities.

(33) *** He should, *** be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

(34) He should be impartial *** administer justice according to law *** nor for the purpose of advancing his personal ambitions or increasing his popularity.

I. REPORT ON UNPROFESSIONAL CONDUCT FOR CORRECTION

4. The petitioner herewith tenders a report on various attorneys all of whom are also Federal Judges, so as to afford the 9 members of this Court an opportunity "to criticize and correct unprofessional", and even criminal conduct pursuant to CANON 11 above:

District Judges Robert C. Zampano and T. Emmet Clarie can be given an almost perfect bill of health so far as misbehavior is concerned, as can be gathered from a report on them to be found on page 12 of the petition for Certiorari. And it is only fair to state that it was Judge Clarie's friendly warning as to the jurisdictional opposition bound to arise at the very first hearing, which sent petitioner to the law libraries for an intensive two weeks research, which resulted in a discovery of the long line of EXTRINSIC FRAUD cases beginning with U.S. v. Throckmorton, 98 U.S. 61 with modification contained in Marshall v. Holmes, 141 U.S. 589 as being applicable to several of the State Judges & Justices named as defendants, which were made the occasion for filing an amended complaint with two annexed EXHIBITS on August 24, 1966.

5. The situation with respect to Chief Judge Wm. H. Timbers is quite different. He couldn't find any legitimate ground for asserting lack of jurisdiction, so he twisted some facts, lied about others and succeeded in fabricating some 6 false grounds, all of which collapsed upon critical examination and were demonstrated to be falsehoods in a motion to set aside the final judgment of denial he had entered on Sept.19, 1967, and which was placed on the calendar for hearing before Judge Timbers on October 16,1967. When petitioner objected to his sitting on the motion because of disqualification, Judge Timbers acquiesced by saying:

"But be that as it may, I will refer this matter, that is, the motion on this calendar, to Judge Blumenfeld for all purposes, including the propriety of a disbarred attorney continuing to practice law in this court. The matter, therefore, is off and referred to Judge Blumenfeld for all purposes. **** And since you don't want me to hear it anyway, I take it

everybody will be satisfied if I refer it to Judge Blumenfeld. And it is so ordered. You may call the next case."

Nothing has been heard from that motion from that day to this. It seems to have been pocketed. Other comments made by Judge Timbers appearing in the transcript of that hearing clearly indicate a conspiracy existing between the two Judges to deprive petitioner of his clear right to continue practicing law pending appeal as required by Rules 62(d) & 73(d) of Civil Procedure. (See Appendix,pp.AP-4 to 6 & Appendix #2, p.22)

The 6 FALSEHOODS above mentioned pronounced in writing by Judge Timbers will be found buried in plausible language&reasoning in Tkaczyk v. Gallagher, 259 F.Supp.584, and are spelled out in careful detail in a 6 page affirmation of the petitioner,dated June 19,67, in support of motion to vacate and set aside the aforesaid judgment of dismissal, only they were labeled "MISTAKES OF FACT" out of respect for Judge Timbers in an effort to let him down easily, which he did not appear to appreciate, for he flatly denied the motion without comment on September 19,1967, which indicated that he intended the mistakes instead of their being accidental. This opened the way for the 6 falsehood motion of September 29 aforesaid. The 6 MISTAKES OF FACT motion is composed of substantially the same material presented to this Court in a PETITION FOR REHEARING under date of May 12,1967 in No.1372 Misc.O.T. 66, which was denied without comment on April 17,1967.

This opinion in 259 F.Supp.584 seems to come within the prohibition of 18 U.S.C.1018, providing that:

"Whoever, being a public officer or other person authorized by law of the U.S. to make or give a certificate,or other writing,knowingly makes and delivers as true such a certificate or writing,containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere provided by law, shall be fined not more than $500. or imprisoned not more than one year, or both."

This falsehood in writing seems also to qualify Judge Timbers for prosecution under the perjury law, 18 U.S.C 1621, which imposes a fine up to $2000., or imprisonment up to 5 years or both, by reason of the Judicial

oath of office Judge Timbers was obliged to take as set forth in 28 U.S.C.453.

The State of Connecticut also required of lawyer Timbers when he was admitted to the State bar the following oath (Stat.1-25):

"You solemnly swear that you will do no falsehood, nor consent to any to be done in court,and if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed;"

This oath serves to render Judge Timbers liable to 5 years imprisonment for perjury under State Statute 53-143. But this isn't all. 18 U.S.C.13 (Chap.1) provides that:

"Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Sec.7 of this title, is guilty of any act or omission which although not made punishable if committed or omitted within the jurisdiction of the State *** in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

Still another State Statute (54-197) known as the Conspiracy statute would seem to apply to the joint action of both Judges Timbers and Blumenfeld who worked together as a well greased team to accomplish their nefarious object of disbarring the petitioner, first, to get the heat off the 8 State Judges, and finally to get the heat off of Timbers himself. This Conspiracy Statute is generous. It imposes up to $5000. fine or up to 15 years in prison, or both.

6. Then all of the above criminal statutes, both federal and state, are applicable to Judge Blumenfeld for his prodigious falsehood emblazoned in his opinion of June 20,1967, 3rd paragraph on page A-9 of Appendix #2, where he utilized his own falsehood as his sole basis for petitioner's disbarment. And the Conspiracy Statute ties him up tight with Timbers, so that both of them share the fines and imprisonments together for what they did separately, each in his own respective sphere. They worked well together. A perfect set-up,

which no lawyer in the State would be likely to seek to upset because of the vested power wielded by these two Federal District Judges, who are pouring ignominy by the carload upon the legal profession and have the American Bar Association at its wits' end to know how to terminate such hooliganism. In all likelihood the American Bar Association has no knowledge of this particular case, but its literature indicates widespread and serious difficulties in getting the judiciary to be obedient to the CANONS of Judicial Ethics.

7. The 3 U.S.Court of Appeals Judges in New York City, who in 386 F.2d 807 adopted Judge Blumenfeld's major falsehood as truth and did so in writing, thereby joined the conspiracy themselves and have rendered themselves liable to all of the federal fines and imprisonments as have been pointed out above for repeating in writing a gigantic falsehood with full knowledge of its falsity. These guilty Appeals Judges are Chief Judge Lumbard, Irving R.Kaufman and Wilfred Feinberg. They have no more excuse for planting falsehoods in their PER CURIAM than had Judge Blumenfeld. Besides having the original MOTION TO QUASH with its 11 pages and 38 page APPENDIX present before them in the certified RECORD of the case, the petitioner had furnished them with 3 additional Xerox copies for ease of private consumption. So all 3 Judges were well supplied with the abundant documentary evidence of everything complained of. And the other 6 Judges in that Court were all asked to participate in a REHEARING IN BANC, which all refused to do. It does seem that those 6 Judges are reprehensible for MISPRISION OF FELONY under 18 U. S.C.4, which provides:

"Whoever, having knowledge of the actual commission of a felony, cognizable by a Court of the U.S., conceals and does not as soon as possible make known the same to some Judge or other person in civil or military authority under the U.S., should be fined not more than $500. or imprisoned not more than 3 years or both."

II. FAILURE TO IDENTIFY CHARGES REQUIRING PROOF DEPRIVED PETITIONER OF DUE PROCESS.

8. On April 8, 1968, subsequent to the filing

of the Petition for Certiorari in the instant case, this Court handed down a decision In re John Ruffalo, Jr., No.73, October Term 1967, 36 Law Week 4284, in which Mr. Justice Douglas wrote the opinion, reversing the disbarment of Ruffalo for want of due process in that he was not notified in advance of an additional charge against him and had no notice of it until the hearing was about half over. This was somewhat the very same predicament petitioner found himself early in this proceeding as is apparent from Judge Blumenfeld's ruling of May 17,1967 (App. p.A-5 & A-6) on motion for more definite statement, followed by petitioner's assertion that "Not even to know what the charges are is a deprivation of due process of law and recognized as such all over the land." (App.#2, p.A-47,par.4) This was such a minor issue as compared with the 6 falsehoods of Judge Timbers and the gorgeous falsehood of Judge Blumenfeld, and the 3 other due process questions (II, III & IV) discussed on pages 21 to 23 of the Petition, that it was crowded out of the Petition to this Court and never had a chance of consideration by this Court. And yet, in the interim, a similar constitutional point released Ruffalo and is presented herewith as a new ground for rehearing.

9. The disadvantage of this denial of a more definite statement by Judge Blumenfeld is made clear when the Solicitor-General rises up on page 2 of his Opposition Brief and points out that the State Supreme Court was alleged in Complaint 11,551 to have "listened to a string of falsehoods related to them in open Court" and "knowingly used them to fabricate a false charge against the plaintiffs of failing to use due diligence in prosecution of their appeal, which they knew was not true." This statement is very simple of proof from various transcripts, but was not mentioned in either the MEMO of the U.S.Attorney (A-14 to 21) or the Order to Show Cause itself (A-12 to 14). Hence, no effort at any time was made by the petitioner to justify the remarks which for the first time in the entire case was raised by the Solicitor-General, whom the petitioner holds in such high esteem that he cannot attribute this reference to his friendship for Judge Blumenfeld with whom he associated three years as fellow

members of the Class of 1928 at Harvard Law School. But it demonstrates the dangers to which petitioner was exposed when Judge Blumenfeld denied identification of the charges calling for proof.

III. VIOLATION OF 7TH AMENDMENT RIGHT TO TRIAL BY JURY.

10. There is no doubt as to the right of the 3 plaintiffs to a trial by jury of the issues of fact likely to develop in their original action #11,551, temporarily at a stand-still in the U.S.District Court. This right was claimed by them as appears on page A-38. And there is little doubt that Judges Timbers and Blumenfeld realized that by the strategy of instituting disbarment proceedings, they could escape a jury and substitute themselves as judges and thereby insure what the judgment was going to be, even if it involved falsehood and perjury in which they both indulged with distressing facility. Realizing that this was a fraudulent evasion of his clients' rights to jury trial and of his own rights to an impartial hearing, petitioner on page A-52 demanded trial by jury of all issues of fact in the disbarment proceeding as well as in the Counterclaim which followed against the two Judges; but typical of their cunning, this demand for jury trial was totally ignored by both Judges and resulted in the moral and ethical disaster, of which this Court is already aware, in both the District and Appeals Courts. The fraudulent and deliberate violation of this 7th Amendment right belonging both to the petitioner and his 3 clients, appears to be sufficient to justify a rehearing.

11. The undersigned hereby certifies that this petition is presented in good faith, is not interposed for delay, in my judgment is well founded, and is restricted to grounds based upon intervening circumstances of substantial effect, or to other grounds of substantiality available to petitioner, although not previously presented.

Affirmed before me this 11th day of June, 1968

Loring J. Whiteside

Loring J. Whiteside, pro se
South Pease Road, Woodbridge, Connecticut 06525

Notary Public. My commission expires April 1st 1970